

## CALIFORNIA COASTAL COMMISSION

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Hearing Date: May 12, 2004

**STAFF REPORT – APPEAL  
SUBSTANTIAL ISSUE & DE NOVO**

**APPEAL NO.:** A-2-SMC-00-031

**APPLICANTS:** Federico Corado, Corado, Inc.

**LOCAL GOVERNMENT:** San Mateo County

**ACTION:** Approved with Conditions

**PROJECT LOCATION:** 1181 Etheldore Street, Moss Beach  
APN 037-320-270

**PROJECT DESCRIPTION:** Subdivision of a 12.5 acre parcel into 59 lots, construction of 73 affordable senior apartments, a resident manager's unit and recreation building, 55 for-sale, market-rate single-family homes, a children's play area, and infrastructure improvements.

**APPELLANTS:** Commissioners Christina L. Desser & Paula Daniels, Gary Kind, Chuck Kozak, Rocco Mancinelli, Paul Perkovic, Lynn Rothschild, and Kathryn Slater-Carter

**RECOMMENDATION:** Substantial Issue and Denial

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## **STAFF NOTE**

The local government action on the approved development included both the submittal of an amendment to the LCP to the Commission and approval of a CDP. The related LCP amendment is also before the Commission as Item 8a of the May 12, 2004 agenda (LCPA No. 2-02). The LCP amendment is a necessary precedent to an approvable CDP because the approved development does not conform to the minimum lot-size and setback standards of the current zoning.

Because the County's final action approving the CDP for the project preceded Commission certification of the related LCP amendment, the approved development is on its face inconsistent with the certified LCP. In addition, the proposed LCPA does not include all of the revisions that would be necessary to facilitate the related development currently before the Commission on appeal. Accordingly, staff observes that for the reasons discussed herein, even if the Commission were to certify the requested LCPA, which staff does not recommend, such action would not resolve all of the issues about the local coastal development permit's conformance with the certified LCP.

## **1.0 EXECUTIVE SUMMARY**

### **1.1 Summary of Staff Recommendation: Substantial Issue & De Novo**

#### **Proposed Project**

The proposed Moss Beach Highlands development includes subdivision of a 12.5-acre parcel into 59 lots, construction of 55 market-rate single-family homes, four two-story apartment buildings with a total of 73 senior low-income rental units, a community recreation building, tot lot, and associated infrastructure improvements. The project site, which is identified in the San Mateo County LCP as a potential affordable housing site, is located inland of Highway 1, just north of the Half Moon Bay airport at the base of Montara Mountain and the edge of the urban/rural boundary in the unincorporated community of Moss Beach. The immediately surrounding land uses include extensive highly scenic open space, agriculture, single-family homes, and the Seton Medical Center Coastsides, which is a 116-inpatient residential nursing care facility with small emergency and adult acute care units surrounded by large trees.

The project site is comprised of two terraces, separated by steep slopes. The single-family homes would occupy the majority of the developed area, approximately 5.7 acres total, and would be located primarily on the upper terrace, but with some lots located along a road that would traverse the site from the base of the lower terrace, up the hillside to the upper terrace. The proposed apartment buildings, recreation building and associated parking lots would be located on an approximately 2-acre portion of the lower terrace adjacent to Etheldore Street.

#### **Action by San Mateo County**

The County's actions on the project include both approval of a coastal development permit, which has been appealed to the Commission, and a request for Commission certification of an LCP amendment. Although the County acted on both the CDP and LCP amendment at the same time, the CDP is dependent on Commission certification of the proposed changes to the LCP, because the approved development does not conform to the LUP Policy concerning affordable

housing requirements or to the zoning designation for the site. As such, the Commission will consider the LCP amendment before taking action on the appeal.

### **Recommendation on Appeal**

As stated above, approval of a CDP for the project is dependent on Commission certification of an LCP amendment to rezone the site to PUD, which in turn requires Commission certification of a precise development plan for the site. Without Commission certification of the zoning change and precise development plan, the CDP approved by the County is inconsistent, on its face, with the LCP zoning designation for the site, and the CDP must therefore be denied. In addition, the CDP approved by the County would authorize development that is inconsistent with policies of the certified LUP concerning visual resources, landform alteration, hazards, wetlands, and sensitive habitat. Specifically, the Precise Development Plan would allow:

- Development on and near a ridgeline and hilltop as viewed from Highway 1 in conflict with LUP Policy 8.7, which prohibits development on ridgeline and hilltops and development from projecting above ridgelines.
- Development on slopes with a grade of 30% or steeper in conflict with LUP Policy 9.18, which prohibits development on slopes of 30% or steeper unless alternatives exist.
- Approximately 92,000 cubic yards of grading with extensive use of retaining walls in conflict with 8.13, which requires structures to be designed to fit the topography of the site and not require extensive cutting, grading, and filling for construction.
- Development immediately adjacent to a wetland in conflict with LUP Policies 7.18 and 7.19, which prohibits development within 100 feet of wetlands, and
- Development adjacent to an environmentally sensitive habitat that would significantly degrade the habitat and reduce its biological productivity in conflict with LUP Policy 7.3, which requires development to be sited and designed to avoid significant adverse impacts to and maintain the biological productivity of sensitive habitats.

For these reasons, ***the staff recommends that the Commission find a substantial issue exists concerning the conformity of the approved development with the policies of the certified LCP and deny the CDP application on de novo review.*** Staff further notes that since the property has not been subdivided and is one parcel with one owner, alternatives are clearly available which would provide for some development consistent with the provisions of the certified LCP, and the site could be developed consistent with the current zoning designation, obviating the need for certification of a precise development plan and associated zoning change. However, the numerous LCP policy conflicts presented by the approved development cannot be corrected without comprehensive changes to the project plans, requiring substantial site design, architectural, and engineering work. Such a fundamental redesign of the project is too extensive to be undertaken by the Commission through conditions of approval of the CDP. Therefore, staff recommends denial of the CDP rather than a conditional approval.

**Changed Circumstances since LCP Certification in 1981**

The South Moss Beach site was designated as one of four potential affordable housing development sites located in the San Mateo County Mid-Coast region when the County's LCP was certified in 1981. However, in addition to the specific LCP policy conflicts identified above, review of the proposed development raises a future issue regarding whether designation of the site for potential affordable housing with a maximum potentially allowable medium-high density development remains realistic under present circumstances. Significant changed circumstances since the time that the LCP was certified in 1981 include:

- Growth in the Mid-Coast area has occurred at less than half the rate anticipated.
- Plans to construct a Highway 1 Devil's Slide bypass through Moss Beach and Montara inland of the South Moss Beach site have been abandoned in favor of a tunnel.
- The Peninsula Open Space Trust acquired the 4,262-acre Rancho Corral de Tierra surrounding Moss Beach and Montara directly contiguous with the South Moss Beach site. This open space acquisition is contiguous with the 625-acre McNee Ranch State Park acquisition and Golden Gate National Recreation Area lands to the east. Presently, the site borders on over 6,700 acres of adjoining publicly accessible highly scenic and biologically valuable open space lands, and further substantial additions to these open space areas are expected to occur through the Caltrans Devil's Slide Tunnel project.

As a result of the changed circumstances noted above, much of the area around Moss Beach and Montara remains undeveloped and is now permanently protected open space. The County is currently in the process of updating the Mid-Coast portion of the LCP and is considering whether to reduce the annual residential growth limit and the LCP buildout numbers to reflect these changed circumstances.

Since certification of the LCP in 1981, the 40-acre Miramar site has been dropped from the list of potential affordable housing sites and an affordable housing development approved for the North Moss Beach site in 1988 was never carried out. Unlike the South Moss Beach site, the North Moss Beach site is adjacent to existing residential development and appears to be a more suitable location for the development of a medium-high density affordable housing development.

It is important to note that while none of the four potential Mid-Coast affordable housing sites originally identified in the County's LCP have been developed, approximately 300 affordable units have been constructed nearby in Half Moon Bay over the last 20 years, including 64 very low income senior rental units in the Leslie Gardens development in downtown Half Moon Bay. Downtown Half Moon Bay provides a full range of urban services and is therefore suited to support a senior housing development, where many residents are dependent on very limited public transit and/or private shuttle services to gain access to basic services.

Finally, staff also notes that provision of the LCP, Government Code or the Coastal Act allows for development of the South Moss Beach site at a higher density than that density that can feasibly be accommodated on the site in a manner that is in conformity with the certified LCP. In fact, Coastal Act Section 30604(f) makes it clear that density bonuses that are mandatory

under the State Government Code Section 65915 for affordable housing developments in areas of the State outside of the Coastal Zone are not required to be granted for development located in the Coastal Zone if the density sought cannot be feasibly accommodated in a manner that is in conformity with the certified LCP or Chapter 3 of the Coastal Act. In addition, the Government Code itself contains provisions similar to Coastal Act Section 30604(f) that expressly state that the State affordable housing policies do not supersede the requirements of the Coastal Act. Effective in 2003, the Legislature added Government Code Section 65915 subsection (m), which expressly states that affordable housing law does not supersede or in any way alter or lessen the effect or application of the California Coastal Act. Pursuant to the above cited State housing policies, density bonuses and other incentives and concessions for affordable housing developments may only be granted for development in the Coastal Zone if the development can be carried out in a manner that is consistent with the policies of Chapter 3 of the Coastal Act and/or the applicable certified LCP.

**The motion to adopt the staff recommendation of Substantial Issue is found on page 5.**  
**The motion to adopt the staff recommendation of Denial is found on pages 5-6.**

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## **2.0 STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

### **Substantial Issue**

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

### **Motion**

*I move that the Commission determine that Appeal No. A-2-SMC-00-031 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

### **Staff Recommendation**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

### **Resolution to Find Substantial Issue**

The Commission hereby finds that Appeal No. A-2-SMC-00-031 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

## **3.0 STAFF RECOMMENDATION ON DE NOVO**

### **De Novo**

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to

## A-2-SMC-00-031 (Corado, Inc.)

the standards set forth in the certified local coastal program and the public access policies of the Coastal Act and deny the permit.

### Motion

*I move that the Commission approve Coastal Development Permit No. A-2-SMC-00-031 for the development proposed by the applicant.*

### Staff Recommendation

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution to Deny the Permit

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

## PART ONE- FINDINGS ON SUBSTANTIAL ISSUE

### 4.0 PROJECT SETTING AND DESCRIPTION

#### 4.1 Project Location and Site Description

The approved development is located on a 12.5-acre undeveloped parcel, known as South Moss Beach, located at the western edge of San Mateo County in the unincorporated community of Moss Beach (Exhibits 1, 2, 3, 12 & 13). Regional access to the site is available via Highway 1 and State Route 92 and local access is available via Etheldore Street which connects with Highway 1 at two locations, approximately one quarter-mile south of the site and one half mile north of site. The incorporated City of Half Moon Bay is about 6 miles south of the site.

The site is just within the urban portion of the urban/rural boundary at the south end of Moss Beach east of Highway 1 (Exhibit 4). Etheldore Street, a two lane, approximately 30-foot-wide road providing access to the neighboring residential area from Highway 1, borders the property to the west. The street lacks sidewalks, road shoulders, drainage improvements (drainage ditches on either side of the street collect and channel runoff), and in some locations, pavement (Exhibit 11). Across Etheldore Street is an approximately 7-acre vacant parcel owned by San Mateo County and designated as open-space. The parcel consists of Class II prime agricultural soils and is covered with grasses and trees.

The northern edge of the site abuts the Seton Medical Center Coastsides and undeveloped lands owned by the Roman Catholic Archdiocese. The Seton Medical Center Coastsides is a private medical facility that provides physical, occupational and speech therapies, radiology/mammography, and emergency services to the surrounding community and year-round extended care to approximately 116 inpatient residents. A cypress grove screens the Medical

## **A-2-SMC-00-031 (Corado, Inc.)**

Center from the South Moss Beach site and from Highway 1. The remaining northern edge of the South Moss Beach site, approximately 660 feet, abut undeveloped parcel owned by the Roman Catholic Archdiocese, which is designated as very low density residential (Exhibit 14).

The eastern and southern edges of the South Moss Beach site are bordered by the Peninsula Open Space Trust (POST) Rancho Corral de Tierra acquisition that stretches east, south, and north of the site for 4,262-acres (Exhibit 5). The POST land, which includes beautiful, scenic flatlands, uplands, and two main peaks of Montara Mountain (Montara Knob and South Peak), has over four miles of its boundaries contiguous to public lands, consisting of McNee Ranch (part of Montara State Beach Park), San Pedro Valley County Park, the San Francisco Water Department's Peninsula Watershed, and scenic and recreation easements of the Golden Gate National Recreation Area. As such, the acquisition of the Rancho created approximately 6,700 adjoining acres of publicly accessible land for recreational uses. POST's purchase of the property also preserved productive agricultural land. At present, sections of the valleys and lowland areas, adjacent to Highway 1, support approximately 230 acres of row cropping (Exhibit 15). In addition to agricultural operations, four private horse stables, two of which are located just south of the South Moss Beach site, lease portions of the property from POST. The remaining acreage is open space preserved to protect habitat and/or recreational activities such as hiking, biking, and horseback riding. POST's ultimate goal is to transfer Rancho Corral de Tierra to State or Federal Park ownership.

Although located within the urban portion of the urban/rural boundary, due to the location of the property on the edge of the boundary, as discussed above, most of the adjacent land uses surrounding the site are rural. The nearest residential development is located within the urban boundary approximately 700 feet north and northwest of the site. The residential neighborhoods are designated as medium density residential (6.1 to 8.7 dwelling units per acre) and zoned as R-1/S-17/DR (minimum parcel size 5000 square feet). Much of the residential development is screened from Highway 1 and open space lands by existing trees and vegetation (Exhibit 12).

The site is zoned Affordable Housing/Design Review/Coastal Development (R-3-A/S-5/DR/CD) and is comprised of a 4.5-acre flat lowland area that abuts Etheldore Street, steep hill with west- and south-facing slopes, and a 6.5-acre flat hilltop. The hilltop eventually slopes downward in an easterly direction towards a tributary ravine and a southerly direction toward San Vicente Creek located approximately 80 feet at the closest to 350 feet at the farthest from the site's southern boundary. Site elevations range from 77 feet to 179 feet above mean sea level (msl). The site is predominantly grassland with small pockets of northern coastal scrub and scattered pine and cypress trees. In addition, a 0.6-acre stand of Monterey cypress runs along the northern edge of the parcel near the adjacent Seton Medical Center. On the uppermost eastern border of the property is a .10-acre wetland, located partially on and partially off the site. A 0.025-acre wetland associated with a drainage ditch is located at the base of the site adjacent to Etheldore Street. The site was rezoned from agriculture to medium-high density residential in 1980 and 1981. The only developed features of the site are a well in the northwest corner of the site and a dirt road/trail that crosses the site in a southwest/northeast direction, connecting Etheldore Street with the parking lot of the Seaton Medical Center.

### **4.2 Project Description**

The approved project includes the subdivision of a 12.5-acre parcel into 59 parcels and the

## **A-2-SMC-00-031 (Corado, Inc.)**

construction of 73 affordable senior apartments, a resident manager's unit, a community/recreation building, 55 single-family homes, a tot-lot playground, and infrastructure improvements including paved roads, parking areas, storm drainage facilities, water and sewer service extensions, underground power utility connections, and a 13,000-foot-long looped water line connecting the site to the Coastside County Water District (CCWD) water system (Exhibits 6 & 7).

The senior housing apartments, recreation building, and associated parking lots would be located on an approximately 2-acre portion of the lower terrace adjacent to Etheldore Street. Access to the senior housing complex would be directly from Etheldore Street via a driveway to a central parking area. A second emergency access road would also connect to Etheldore Street from the parking lot.

The single-family homes would be primarily located on the 6.5-acre upper terrace; however, 13 units would be located in the lowland area and would step up the hillside to the top. The proposed lots would range in size from 3,000 to 12,000 square feet and the homes (both single and two-story) would range from approximately 2,200 to 2,600 square feet (excluding garages). Each single-family lot would include off street parking for four vehicles (i.e., a two-car garage and a two-car driveway). Lot width would range from 43 feet to 60 feet and lot depth would range from 70 to 160 feet. Typical setbacks include the following: front yard 11 feet, garage 18 feet, side yard 4 feet, and rear yard 15 feet. An approximately 880-foot long and 20-foot wide road would provide access from Etheldore Street to the top of the site.

A total of approximately 1.5 acres of open space and .05 acres of public park would be provided within the 12.5-acre site. The open space acreage consists primarily of the slope between the upper and lower terraces and the existing cypress tree grove consisting of 28 trees in the northern portion of the site. Under the approved development plan, 11 trees would be removed. In addition, the approved subdivision creates a separate parcel that encompasses the wetland that is found partially on the eastern portion of the site and a 100-foot wetland buffer. No development would be located within the wetland parcel.

The approved development also includes a looped water pipeline approximately 13,000 feet in length that would connect the project site with the CCWD water system (Exhibit 7). The approved route of the water main extension includes two parallel pipelines 12-inch diameter that would begin at the end of the existing CCWD 12-inch line near the intersection of Highway 1 and Coral Reef Avenue in unincorporated San Mateo County. Running northerly from this location, the pipeline would lie within the Caltrans Highway 1 right-of-way, crossing over Denniston Creek. After crossing the Creek, the pipeline would extend northward. One pipeline, the western alignment, would branch off to the west to the Half Moon Bay Airport, crossing Highway 1 in a steel sleeve to be bored and jacked under the Highway. The pipeline would then enter the Half Moon Bay Airport and continue northerly to a point opposite Etheldore Street where it would recross Highway 1. The pipeline would follow Etheldore Street within the pavement across San Vicente Creek west of the Etheldore Street bridge. The water line would then cross Etheldore Street and enter the project site. The eastern pipeline, after crossing Denniston Creek, would continue within the Caltrans right-of-way, northerly to Etheldore Street. The water line would be within the pavement along Etheldore Street and would cross over San



Vicente Creek on the eastern side of the Etheldore Street bridge. The eastern line would connect to the southeastern end of the project site.

## **5.0 APPEAL PROCESS**

### **5.1 Local Government Action**

In October of 1997, Kaufman and Broad (former developers of the project) submitted an application for the Moss Beach Highlands development. A Draft Environmental Impact Report was prepared for the project and published on May 5, 1999. A final EIR responding to comments was published on January 31, 2000. Included in the final EIR was a revised reduced density alternative to the project, which reduced the number of units, relocated an offsite detention pond proposed to improve the quality of storm water runoff on site, and established a 100-foot buffer zone around a wetland found partially on the project site. The applicant altered the project description to incorporate the changes from the revised reduced density alternative. The Planning Commission reviewed the project over the course of two months and four public hearings beginning February 2000. At the final meeting on April 12, 2000, the Planning Commission voted three to two, to approve the revised reduced density alternative as described in EIR reflected on the vesting tentative map. However, the Planning Commission recommended two single-family lots be eliminated, due to concerns regarding visual impacts as viewed from Highway 1.

In response to the Planning Commission's concerns about visual resources, the applicant proposed an alternative that would relocate the two lots. On 26, 2000 and July 11, 2000 the Board of Supervisors considered the project; however, at both meetings, the item was continued to allow additional time for further analysis of visual impacts, investigation of a potential violation involving weed abatement activities, and consideration of correspondents received for members of the Coastside County Water District Board. In its final action on August 8, 2000, the Board of Supervisors further modified the lot configuration to address continuing visual resource concerns and conditionally approved the coastal development permit application.

### **5.2 Filing of Appeal**

On August 23, 2000, the Commission received notice of the County's final action approving a coastal development permit for the project. The Commission's appeal period commenced the following working day and ran for ten working days thereafter (August 24 through September 7, 2000). On September 7, 2000 the Commission received an appeal from Commissioners Paula Daniels and Christina Desser, and a second appeal from Gary Kind, Chuck Kozak, Rocco Mancinelli, Paul Perkovic, Lynn Rothschild, and Kathryn Slater-Carter (Exhibit 8, Appeal by Commissioners Daniels and Desser and Exhibit 9, Appeal by Kind, Kozak, Mancinelli, Perkovic, Rothschild, and Slater-Carter). Following receipt of each of these appeals, the Commission mailed a notification of appeal to the County and the applicant.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeals on the above-described decision were filed on September 7, 2000. The 49<sup>th</sup> day after the appeals had been filed was October 26, 2000. The only Commission meeting within the 49-day period was October 10-13, 2000.

In accordance with the California Code of Regulations, on September 8, 2000, staff requested all relevant documents and materials regarding the subject approval from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. The Commission received the local record from the County on September 25, 2000. Consequently, the County permit file information had not been received as of September 21, 2000, the day of the mailing of staff reports to the Commission and interested parties on items on the Commission's October 2000 meeting agenda. Therefore, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question. Consistent with Section 13112 of the California Code of Regulations, since the Commission did not receive the requested documents and materials, Commission staff was prepared to recommend that the Commission open and continue the hearing. On October 2, 2000 the applicant waived his right to a hearing within 49 days of the date the appeal was filed, obviating the need to open and continue a hearing on the October agenda.

### **5.3 Appeals Under the Coastal Act**

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a CDP application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff; or in a sensitive coastal resource area or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Developments that constitute a major public works or a major energy facility may be appealed, whether they are approved or denied by the local government.

The development approved by the County therefore meets the Coastal Act's appeal criteria in Section 30603 of the Coastal Act for two independent reasons. The approved development is appealable to the Commission pursuant to Coastal Act Section 30603(a)(2) because it includes development, i.e. a subdivision as well as structural development, within 100 feet of a wetland as defined by Section 13577 of the Commission's regulations. The approved development is also appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act because it includes a subdivision, which is not designated as the principally permitted use for the applicable zoning district under the San Mateo County LCP. Section 30604(a)(4) of the Coastal Act confers appellate jurisdiction over "any development" approved by a coastal county that is not designated as the principal permitted use under a county's approved zoning ordinance. A division of land constitutes "development" under both Section 30106 of the Coastal Act and the certified LCP. The property affected by the approved subdivision is zoned R-3-A. Divisions of land are not designated as the principal permitted use under the applicable Zoning District or the applicable zoning district map. Because the division of land constitutes "development" but is not identified as the principal permitted use of the R-3-A Zoning District, any approval of a coastal

development permit for a division of land in the R-3-A zone is appealable to the Coastal Commission. The Commission also notes that the LCP itself requires a use permit for all uses in the R-3-A Zoning District.

Pursuant to Section 30603 of the Coastal Act, an appeal for development in this location is limited to the allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted to the Commission or the Executive Director in writing. It takes a majority of the Commissioners present to find that no substantial issue is raised.

Unless it is determined that the project raises no substantial issue, the Commission will conduct a full *de novo* public hearing on the merits of the project at the same or subsequent hearing. If the Commission conducts a *de novo* hearing on the appeal, the applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program.

#### **5.4 Standard of Review**

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

The term *substantial issue* is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Commission Regulations, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

If the Commission chooses not to hear an appeal, appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to California Code of Civil Procedure, Section 1094.5.

## **6.0 SUBSTANTIAL ISSUE ANALYSIS**

### **6.1 Appellants' Contentions**

The Coastal Commission received two separate appeals on the approved development. The relevant text of the appeals is included in Exhibits 8 and 9.

The appeal filed by Commissioners Desser and Daniels includes the following contentions (Exhibit 8):

- The approved development does not conform to the development standards for Affordable Housing/Design Review/Coastal Development (R-3-A/S-5/DR/CD) zoned parcels, including lot sizes, setbacks, and other zoning standards.
- The approved development is inconsistent with LCP Visual Resource Policies because it includes single-family houses that would project above the ridgeline.
- The approved development does not conform to the LUP Policy, 8.13 Special Design Guidelines for Coastal Communities because it would require extensive grading (over 92,000 cubic yards).

The appeal filed by Gary Kind, Chuck Kozak, Rocco Mancinelli, Paul Perkovic, Lynn Rothschild, and Kathryn Slater-Carter includes the following contentions (Exhibit 9):

- The approved development is inconsistent with the visual resource protection policies of the LCP because a significant number of homes would protrude above the ridgeline and will be prominent from Highway 1 from three main vantage points.
- The approved development does not conform to the LCP hazard policies because it includes development on 30% or greater slopes.
- The approved development requires extensive grading, cutting and filling for each home site and would result in major alteration of the landform inconsistent with the LCP Visual Resource Policies.

In this case, for reasons further specified below, the Commission exercises its discretion and determines that the appeals of the development approved by the County raise a substantial issue of conformity of the approved development with the certified LCP.

## 6.2 Appellants Contentions that Raise Substantial Issue

### 6.2.1 Visual Resources

#### Contention

The Commissioner Appellants contend that the approved development is inconsistent with LUP Policy 8.7, which prohibits development from projecting above the ridgeline. They state:

*Single-family houses that are included in the approved project would project above the ridgeline. The development could be located and designed so that it is not above the ridgeline as required by Policy 8.7.*

Appellants Kind, Kozak, Mancinelli, Perkovic, Rothschild, and Slater-Carter also assert that the approved project is inconsistent with LUP Policy 8.7 because development would project above the ridgeline. They contend:

*A significant number of homes will protrude above the ridge and will be prominent from Highway 1 from 3 main vantage points near the site [Attachment J -- Figures A, B, 1-6]. The houses are so prominent above the ridgeline that they can be seen from Princeton and Clipper Ridge. This project violates each and every part of this policy and should be denied on that basis alone.*

Appellants Kind, Kozak, Mancinelli, Perkovic, Rothschild, and Slater-Carter further contends that the approved development is inconsistent with Policy 8.7, which also prohibits development from being located on ridgeline and hilltops, because according to the appellants "*contrary to this policy, the majority of the new parcels will be on either the ridgeline or hilltop.*" In support of their contentions the appellants included photographs from three nearby locations from Highway 1 that they presented to the Planning Commission and Board of Supervisors that showed: (1) the site with story poles; (2) how the site would appear after the removal of trees for project construction; and (3) the site developed with homes. They contend, according to the photographs, that many of the approved lots are in violation of Policy 8.7.

Lastly, appellants Kind, Kozak, Mancinelli, Perkovic, Rothschild, and Slater-Carter assert that the photomontage presented by the County attempts to hide the project's inconsistency with Policy 8.7 by placing landscaped trees in front of the structures.

#### Applicable Policies

LUP Policy 8.7 Ridgelines and Hilltops provides:

*a. Prohibit the location of new development on ridgelines and hilltops unless there is no other buildable area on the parcel.*

...

*c. Restrict the height of structures to prevent their projection above ridgeline or hilltop silhouettes.*

*d. Prohibit land divisions which would create parcels whose only building site would be on ridgelines or hilltops.*

## Discussion

The project site is located on a south and west-facing hillside within a LCP designated scenic corridor just inland of Highway 1 (a State and County designated Scenic Road) (Exhibits 12 & 16). As described in Section 4.1 above, the site is surrounded by extensive scenic open space and agricultural land.

Immediately to the south of the property lie San Vicente Creek, as well as lands in agricultural production (row cropping) that continue until El Granada (Exhibit 15). The agricultural lands also stretch east of the parcel until they eventually give way to the foothills of Montara Mountain. This area is part of POST's 4,262-acre Rancho Corral de Tierra property (Exhibit 5). As noted in Section 4.1, the POST land is contiguous to public lands, consisting of McNee Ranch (part of Montara State Beach Park), San Pedro Valley County Park, the San Francisco Water Department's Peninsula Watershed, and scenic and recreation easements of the Golden Gate National Recreation Area. From the ridges of Montara Mountain, on a clear day San Francisco Bay, Marin headlands, Mt. Tamalpais, Mt. Diablo, Mount Hamilton, Farallon Islands, Pillar Point and Pigeon Point are visible. POST describes the Rancho property as including:

*...a panorama of awe-inspiring views, rich agricultural lands, important watersheds, miles of public trails, and an incredible array of wildlife and vegetation. (POST 2004)*

With its annual grasslands and scattered trees, the site blends with the surrounding agricultural and open space lands contributing to the rural scenic qualities of this adjacent area. In addition, a 0.6-acre Monterey cypress grove located along the northern border of the parcel screens the nearby residential development and medical center to the north. Together, the site and surrounding agricultural fields, groves of cypress and eucalyptus trees, San Vicente Creek, and coastal mountain range, create a rural landscape between the two more urbanized areas of El Granada and Moss Beach (Exhibit 16).

The project site is visible from several public-viewing locations. The majority of the site, encompassing its western and southern facing slopes, is visible from public trails located in the vicinity of Pillar Point Marsh. Looking east from the trails, the property blends with the adjacent rural lands dominating the visual landscape seen from this position. The site is also visible from Highway 1 where the highway intersects Marine Boulevard, Cypress Avenue, and the south end of Etheldore Street. At the corners where both Marine Boulevard and Cypress Avenue intersects with the highway, the top portion of the western facing slope is visible and forms a ridgeline with the sky (Exhibits 17 & Exhibit 19). The site is also visible from the corner of Etheldore Street and Highway 1. Here, the southwest-facing slope is visible in its entirety and evergreen trees north and east of the site provide a dark silhouette behind the hilltop from this location (Exhibit 20). The site's inclusion in a County Scenic Corridor places a significant value on its visual resources. As such, the protection of these resources is an issue of regional importance. Furthermore, the extent and scope of the approved development and potential visual resource impacts is substantial as compared to the other existing development in the area.

The upper portion of the project site forms a hilltop with a peak elevation of 179 feet above mean sea level (msl). The hilltop is visible and forms a ridgeline with the sky from the intersection of Cypress Avenue and Marine Boulevard with Highway 1 at Viewpoints A and B as depicted in

Exhibits 17 & 19. As stated in the visual resources component of the certified LUP states that ridgelines and hilltops are sensitive landscape features because they form a contrasting boundary where the sky and landmasses meet, which attracts visual attention. Due to the contrast, any alterations along the boundary can be very apparent. To prevent visual resources impacts, LUP Policy 8.7 provides protective standards for development on and near hilltops and ridgelines.<sup>1</sup> Policy 8.7(a) prohibits the location of new development on ridgelines and hilltops unless there is no other buildable area on the parcel. If the development is below a ridgeline or hilltop, Policy 8.7(c) restricts the height of structures to prevent their projection above ridgeline or hilltop silhouettes. Lastly, Policy 8.7(d) prohibits land divisions that would create parcels whose only building site would be on ridgelines or hilltops.

The appellants contend that the approved development would break the ridgeline from three different locations (Viewpoints A and B discussed above, and Viewpoint C located at the corner of Highway 1 in the south end of Etheldore Street). The County record includes photo simulations that depict how the site would appear if it were developed in accordance with the approved site plan. In general, the photo simulation that illustrates the view from Viewpoint A demonstrates that a substantial number of residential structures would break the ridgeline, inconsistent with Policies 8.7(a), (c), and (d) (Exhibit 18). The approved development also includes grading, an access road, and other development on the ridgeline and hilltops inconsistent with Policy 8.7(a). The approved subdivision would create parcels whose only building site would be on the ridgeline inconsistent with Policy 8.7(c). The County record does

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<sup>1</sup> LUP Policy 8.7 was amended by the Coastal Commission on April 29, 1998 to state the following:

*\*8.7 Development on Skylines and Ridgelines*

*a. Prohibit the location of development, in whole or in part, on a skyline or ridgeline, or where it will project above a skyline or ridgeline, unless there is no other developable building site on the parcel.*

*Consistent with Policy 9.18, a site of greater than 30% slope may be deemed developable if it is the only other building site on the parcel and can be developed consistent with all other applicable LCP policies.*

*Prohibit the location of development, in whole or in part, on a skyline, or where it will project above a skyline, when a developable building site exists on a ridgeline.*

*A skyline is the line where sky and land masses meet, and ridgelines are the tops of hills or hillocks normally viewed against a background of other hills (General Plan Policy 4.7).*

*b. Where no other developable building site exists on a parcel, limit development on a skyline or ridgeline to 18 feet in height from the natural or finished grade, whichever is lower.*

*c. Prohibit the creation of new parcels which have no developable building site other than on a skyline or ridgeline.*

As part of the amendment, the Commission also certified a provisional appendix identifying coastal development permit applications (already being processed by County at the time) that are not affected by the LCP amendment policy changes. For these developments, the policies in place prior to the amendment and identified in the provisional appendix apply in lieu of the amended policies. The South Moss Beach Highlands project is included in the list of developments not affected by the April 29, 1998 LCP amendment. Thus, the pre-1998 version of LUP Policy 8.7 is the applicable standard of review for the approved project. Nevertheless it is important to note that even if the new policy were to apply, the approved project would still be found inconsistent with the revised ridgeline and skyline policy due to the location of development which would be located on a ridgeline and skyline.

not include a photo simulation from Viewpoint B; however, as shown in Exhibit 19, any structure located on or near the ridgeline would break the ridgeline from this vantage point.

It is important to note that the photo simulation of Viewpoint A, discussed above, includes simulated landscaping that screens much of the development that would be located on the ridgeline and hilltop. Landscape screening, as mitigation for visual impacts to ridgelines, should not substitute for project alternatives including resiting or reducing density when such alternatives are available. Since the parcel has yet to be subdivided, such alternatives are available, which would allow for development consistent with the hilltop and ridgeline policies of the LCP. As such, the photo simulation should be viewed without landscape mitigation, which consequently would make the development breaking the ridgeline even more apparent. Nevertheless, even with the simulated screening, the approved development as shown in the photo simulation still breaks the ridgeline from Vantage Point A (Exhibit 18).

The approved project would result in: (1) structures breaking the ridgeline as seen from Highway 1 within a County Scenic Corridor; (2) a subdivision which would create parcels whose only building sites would be located on the ridgeline and hilltop; and (3) grading on the ridgeline and hilltop inconsistent with Policies 8.7(a), (c), and (d). Therefore, the Commission finds that the appeal raises a substantial issue regarding the conformity of the approved project with the ridgeline and hilltop policies of the San Mateo County LCP.

### **6.2.2 Zoning**

#### **Contention**

The Commissioner Appellants contend that the approved development does not conform to the zoning standards for Affordable Housing/Design Review/Coastal Development (R-3-A/S-5/DR/CD) zoned parcels including minimum lot sizes and setbacks. They state:

*While the 128 units of the approved project would be within that range of the current zoning, the proposed rezoning to Planned Unit Development (PUD) allows more flexibility in lot sizes, setbacks, and other zoning standards. Therefore, because rezoning is required, the project is not consistent with the existing zoning. San Mateo County has not yet requested an LCP amendment. Until such time that the Commission certifies the required amendment to the LCP, the approved development cannot be found to be in conformity with the LCP.*

#### **Applicable Policies**

Section 6300 (regulations for S-5 district) of the zoning code requires:

District	Minimum building site		Minimum lot area per dwelling unit (square feet)	Minimum yards required		
	Average width (ft.)	Minimum area (ft.)		Front	Side	Rear
S-5	50	5000	2500	20	Five	20



### **Discussion**

The local government action on the approved development included both the submittal of an amendment to the LCP to the Commission and approval of a CDP. The LCP amendment is a necessary precedent to the CDP because the approved development does not conform to the current zoning. Specifically, the approved development does not conform to the minimum lot-size and setback standards of the current zoning. More specifically, the S-5 District requires a minimum 5,000 square-foot parcel size with average width of 50 feet, and front, side, and rear yard setbacks of 20, 5, and 20 feet respectively. The approved development includes the creation of 2,500 square-foot parcels, with widths of less than 50 feet, and front, side, and rear yard setbacks as small as 11, 4, and 15 feet, which do not comply with the S-5 District standards.

Based on the foregoing, the Commission finds that the appeal raises a substantial issue regarding conformity of the approved development with the S-5 Zoning District standards.

### **6.2.3 Hazards**

#### **Contention**

Appellants Kind, Kozak, Mancinelli, Perkovic, Rothschild, and Slater-Carter assert that the approved development is inconsistent with LUP Policy 9.18(a), which prohibits development on slopes of 30% or greater, because the project includes development on 30% or steeper slopes.

#### **Applicable Policies**

LUP Policy 9.18(a) Regulation of Development on 30% or Steeper Slopes provides:

*Prohibit, unless no alternatives exist, development (including land divisions which would create parcels exclusively) on slopes of 30% or greater. If no alternatives exist, require engineering geologic reports to enable minimizing of hazards.*

### **Discussion**

LUP Hazard Policy 9.18(a) prohibits development on slopes of 30% or greater, including land divisions which would create parcels exclusively on slopes of 30% or greater, unless no alternatives exist. The South Moss Beach site is located on the hilly terrain that forms the foothills at the western base of Montara Mountain. Steep slopes traverse the center of the site in a north/south direction while the upper and lower terrace portions of the parcel are relatively level (Exhibit 12). The County record includes a slope map generated on March 21, 2000, which identifies slopes of 30% or greater (Exhibit 10). The record does not include an overlay of the slope map with the approved site plan. Nevertheless, by comparing the approved plan to the slope map, it is apparent that at a minimum a portion of the access road, single-family residences, and grading would be located on 30% or steeper slopes. Since the approved subdivision would result in development on 30% or steeper slopes it raises a significant question of conformity with LUP Policy 9.18(a).

As noted, Policy 9.18(a) allows development on 30% or steeper slopes only if no alternatives exist. No alternative would only exist if the site could not be developed at all without developing on slopes 30% or greater; a property owner is not entitled to a specific level of density. Since the property has yet to be subdivided, alternatives are clearly available which would provide for

development consistent with the steep slope limitations of the certified LCP. In addition, before reaching the conclusion that no alternatives exist to developing on 30% or steeper slopes, all potential alternatives must be thoroughly reviewed and demonstrated to be infeasible. In the case of the project site, three potential offsite alternatives exist that would provide access to the upper site consistent with the slope policy. First, the existing Seton Medical Center access road, which abuts the South Moss Beach site to the north and provides access to the medical center and medical center parking lots, could be extended to the northeastern corner of the South Moss Beach site with little additional grading and paving. Another alternative would entail constructing a road on the Roman Catholic Archdiocese land which abuts the northeast corner of the South Moss Beach site on the east side of the Seton Medical Center property. Currently, the portion of the Archdiocese land immediately adjacent to the site is undeveloped. The topography in this area is relatively flat and the construction of a road would require minor amounts of grading as compared to the quantity of cut and fill that would be necessary to develop a road on 30% or steeper slopes. Lastly, the unpaved road that lies between the site and San Vicente Creek could be extended through what is currently undeveloped land owned by the POST to the south of the site or around the back of the site. Although, at least three potential offsite access road alternatives that would avoid slopes of 30% or steeper exist, the County record does not include an analysis evaluating these potential alternatives.

LUP Policy 9.18(a) prohibits development on slopes 30% or steeper unless no alternative exists. The approved project includes a subdivision resulting in development on areas of the site with 30% or steeper slopes and several alternatives exist that would allow for development of the site without locating development on slopes of 30% or greater steepness. As such, the Commission finds that the appeal raises a substantial issue with respect to the conformance of the approved project with LUP Policy 9.18(a).

#### **6.2.4 Landform Alteration**

##### **Contention**

Appellants Desser, Daniels, Kind, Kozak, Mancinelli, Perkovic, Rothschild, and Slater-Carter assert that the approved development is inconsistent with LUP Policy 8.13(a)(1), Special Design Guidelines for Coastal Communities (Montara-Moss Beach-El Granada), which requires structures be designed to fit the topography of the site and to not require extensive cutting, grading, or filling for construction.

Appellants Desser and Daniels state:

*The approved development requires 92,600 cubic feet (sic) of combined cut and fill for road construction and building sites. The level building pads created for the single-family houses, which have slab foundations, require extensive grading. To be consistent with Policy 8.13a the development should be designed to minimize grading.*

Appellants Kind, Kozak, Mancinelli, Perkovic, Rothschild, and Slater-Carter further support their contentions stating:

*...approximately 75% of the site is either graded or filled. The hilltop is reduced in one area by over 10 ft., as is the lower ridgeline. The face of the hill, with existing slope approaching 30% will have up to 22 ft. of fill creating areas with 50% slope...the topography of this parcel will not be recognizable if this project is completed as proposed*

### **Applicable Policies**

LUP Policy 8.13, Special Design Guidelines for Coastal Communities, states:

*The following special design guidelines supplement the design criteria in the Community Design Manual:*

*a. Montara-Moss Beach-El Granada*

*(1) Design structures which fit the topography of the site and do not require extensive cutting, grading, or filling for construction.*

### **Discussion**

As discussed in Section 6.2.1, the approved development is located within Moss Beach in the San Mateo County mid-coast within a County Scenic Corridor. As such, protection of the site's visual resources from impacts resulting from major landform alteration is of regional importance. The LCP contains specific design guidelines for the mid-coast area intended to protect the region's visual resources. LUP Policy 8.13(a) (1), Special Design Guidelines for the Montara-Moss Beach-El Granada areas, requires structures to be designed to fit the topography of the site and not require extensive cutting, grading, or filling for construction.

As approved, the development would: (1) require a substantial amount of grading; (2) result in major landform alteration; and (3) entail extensive cutting and terracing of the site inconsistent with the landform alteration policies of the LCP. The approved development includes approximately 92,000 cubic yards of grading for road construction and level building pads for the single-family residences, which would result in extensive terracing of site. Due to the steep hillsides of the parcel, level building pads would require extensive cutting, grading, and filling and use of retaining walls. Contrary to the requirements of LUP Policy 8.13(a)(1), the approved development relies on approximately 23 retaining walls ranging in height from approximately 2 feet to 10 feet to create level building pads instead of structures designed to fit the topography. The proposed grading would substantially change the topography of the site. In some locations, the elevations would be reduced 10 feet below the existing grade. In other areas on the site the grade would be increased up to 22 feet above the current elevations. Both the substantial amount of grading and the major alteration of the site's topography are inconsistent with LUP Policy 8.13(a)(1). As such, the Commission finds that the appeal raises a substantial issue with respect to the conformance of the approved project with the requirements of LUP Policy 8.13(a)(1).

## **PART TWO – DE NOVO ACTION ON APPEAL**

### Procedure

Unless the Commission finds that a locally approved coastal development permit does not raise a Substantial Issue of conformity with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the consistency of the proposed project with the certified LCP *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program, the applicable standard of review for the Commission to consider is

whether the development is consistent with the San Mateo County Local Coastal Program (LCP). Testimony may be taken from all interested persons at the *de novo* hearing.

## **7.0 FINDINGS AND DECLARATIONS FOR DENIAL**

Incorporation of Substantial Issue Findings: The Commission hereby incorporates by reference the Substantial Issue Findings above.

### **7.1 Project Site and Description**

Findings 3.1 and 3.2 of the Substantial Issue portion of this report regarding the project and site description are hereby incorporated by reference.

### **7.2 Analysis of LCP Consistency**

As discussed below, the Commission is denying the proposed development because it would be inconsistent with certified LCP provisions of the S-5 Zoning District.

#### **7.2.1 Zoning**

As proposed, the development is inconsistent with the existing zoning of the project site. The 12.5 acre parcel is zoned Affordable Housing/Design Review/Coastal Development (R-3-A/S-5/DR/CD, which requires a minimum lot size of 5,000 square feet, a minimum lot width of 50 feet, and front, side, and rear setbacks of 20, 5, 20 feet respectively. The proposed development includes the creation of 2,500 square-foot parcels, with widths of less than 50 feet and front, side, rear setbacks as small as 11, 4, and 15 feet, inconsistent with the S-5 District standards.

In order to approve the proposed development, the site would need to be rezoned to PUD, which allows more flexibility in lot sizes, setbacks, and other zoning standards. According to Section 6191(a) (requirements for PUD zoning districts), enactment of a PUD zone requires adoption of a precise development plan for the subject area that conforms to the LUP. Since a zoning change requires an LCP amendment, it must be certified by the Commission. Until the Commission certifies an LCP amendment changing the zoning of the South Moss Beach site to PUD and approving a precise development plan, the proposed development will remain inconsistent with the existing LCP zoning standards for S-5 Districts and cannot be approved.

On *de novo* review, the Commission may consider project revisions. Accordingly, the applicant has submitted changes to the project in order to address some of the issues raised by the project approved by the County. The revised plan reduces the: (1) total number of units; (2) development on the ridgeline; and (3) number and height of retaining walls. In addition, the project revisions would result in maintaining the existing drainage régime. While the revised plan addresses some of the issues raised by the County approved plans, it still includes development that would be located: (1) on 30% or steeper slopes; (2) on and project above a ridgeline; and (3) within 100 feet of a wetland in conflict with LUP Policies 8.7, 9.18(a), 7.18, and 7.19, as discussed in Sections 6.2.1 and 6.2.3 of the substantial issue findings and in Sections 10.4, 10.5, and 10.6 of Item W8a, herein incorporated by reference. Thus, even with the applicant's newly proposed revisions, the proposed development remains inconsistent with LCP policies regarding hazards and protection of visual resources and wetlands. As such, a CDP for the revised project cannot be approved consistent with the certified LCP.

As discussed above, the project is inconsistent with the applicable zoning standards. In order to change the zoning standards to allow for the proposed site plan, the site would need to be rezoned to PUD, which requires certification of a precise development plan. The Commission has determined that the proposed Precise Development Plan for the South Moss Beach site, submitted as part of 2-MAJ-02, does not conform to the LCP and has therefore denied certification of the proposed plan and rezoning. As such, the proposed project remains inconsistent with the minimum parcel size, lot width, and setbacks for S-5 zoned districts. Thus, the Commission finds the proposed development inconsistent with Zoning Code Section 6011 and must be denied.

Both County Counsel's April 6, 2000 memorandum to the Planning Commission and County Planning staff's March 24, 2004 letter suggest that affordable housing policies contained in the LCP and the State Government Code justify approval of the proposed project, even though the development is inconsistent with the resource protection policies of the LCP. Both the April 6, 2000 memorandum and the March 24, 2004 letter include the statement that Government Code section 65589.5 prohibits the imposition of conditions on an affordable housing project that would make the development infeasible. Both the memorandum and letter also suggest that limitations on development of the site necessary to ensure conformity with LCP resource protection policies present a conflict with LUP Policy 3.15, which designates the South Moss Beach, North Moss Beach, and North El Granada sites as potential affordable housing development sites, and that such conflicts should be resolved in favor of allowing development of the South Moss Beach site at the density sought by the applicant.

#### **7.2.1.1 LUP Policy 3.15**

Although LUP Policy 3.15 provides for the potential to develop an affordable housing project at the South Moss Beach site by allowing development at a higher density than would otherwise be permitted, this policy neither requires the South Moss Beach site to be developed as an affordable housing site nor does it require development of the site at the maximum allowable density. No provision of the LCP allows development of the South Moss Beach site at a higher density than that density that can feasibly be accommodated on the site in a manner that is in conformity with the certified LCP.

#### **7.2.1.2 Coastal Act**

Coastal Act Section 30604(b) states:

*After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.*

Coastal Act Section 30604(f) states:

*The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require*

*measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.* [Emphasis added.]

Pursuant to Coastal Act Section 30604(b), the standard of review for development in an area with a certified LCP is conformity with the LCP. No provision of the Coastal Act grants a local government the authority to approve development in the Coastal Zone that would conflict with the policies of the certified LCP. In fact, Coastal Act Section 30604(f) makes it clear that density bonuses that are mandatory under the State Government Code Section 65915 for affordable housing developments in areas of the state outside of the Coastal Zone are not required to be granted for development located in the Coastal Zone if the density sought cannot feasibly be accommodated in a manner that is in conformity with a certified LCP or Chapter 3 of the Coastal Act.

#### **7.2.1.3 State Housing Policies**

The County contends that the affordable housing requirements of the Government Code prohibit the County from modifying the Precise Development Plan to bring the plan into conformity with the LCP if such modifications would render development of an affordable housing project at the site infeasible. However, as cited below, the Government Code contains provisions that expressly state that the State affordable housing policies do not supersede the requirements of the Coastal Act. Specifically, subsection (m) of Government Code Section 65915, newly enacted by the Legislature effective 2003, expressly states that affordable housing law does not supersede or alter application of the Coastal Act. It provides:

*(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).*

Another section of affordable housing law echoes the Legislature's limitations on application of the affordable housing provisions. Government Code Section 65589.5, as cited by the County, generally limits how local agencies may deny affordable housing development or impose conditions that would render a proposed affordable housing development infeasible. However, 65589.5 includes numerous caveats to the general limitations, including the following:

*(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or*

*otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).* [Emphasis added.]

Pursuant to the above-cited State housing policies, density bonuses and other incentives and concessions for affordable housing developments may only be granted for development in the Coastal Zone if the development can be carried out in a manner that is consistent with the policies of Chapter 3 of the Coastal Act and/or the applicable certified LCP. State and local housing policies do not supersede the requirements of the Coastal Act, but must be carried out in a manner that conforms to the coastal resource protection policies contained in Chapter 3 of the Coastal Act and/or the applicable certified LCP.

#### **7.2.1.4 Conflict Resolution**

The Coastal Act authorizes the Commission to resolve conflicts in the application of Chapter 3 policies in a manner most protective of coastal resources. Notably, the Coastal Act limits its conflict resolution authorization to conflicts between Chapter 3 policies. County Counsel states that restrictions necessary to conform to the resource protection policies of the LCP that would reduce the density of the development feasible on the South Moss Beach site below that specified in LUP Policy 3.15 would constitute a conflict between policies of the LCP. This position appears to be premised on the assumption that LUP Policy 3.15 *requires* the site to be developed at medium-high density and that development at a lower density is therefore prohibited by Policy 3.15. However, as discussed above, LUP Policy 3.15 does not require development of an affordable housing project at the South Moss Beach site, nor does it prohibit development of the site at a density lower than the maximum allowable. As such, no conflict exists between LUP Policy 3.15 and the either visual resource, hazard, wetland, or any of the other resource protection policies of the LCP. In addition, because the Coastal Act limits its conflict resolution authorization to conflicts between Chapter 3 policies, the County is required to implement LUP Policy 3.15 in a manner that fully conforms to the resource protection policies of its certified LCP.

#### **7.2.1.5 Conclusion**

As stated above, no provision of the LCP, the Government Code, or the Coastal Act allows development of the South Moss Beach site at a higher density than that density that can feasibly be accommodated on the site in a manner that is in conformity with the certified LCP. Therefore, the Commission finds that the proposed IP amendment must be denied because the proposed IP amendment would allow for development inconsistent with the resource protection policies of the certified LUP.

#### **7.2.2 Alternatives**

Denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment backed expectations of the subject property. As discussed herein, denial of this permit request for a subdivision of a 12.5 acre parcel into 59 lots, construction of 73 affordable senior apartments, a resident manager's unit and recreation building, 55 for-sale, market-rate single-family homes, a children's play area, and infrastructure improvements would still leave the applicant available

alternatives to use the 12.5 acre property in a manner that would be consistent with the policies of the LCP.

The County could submit an LCP amendment for certification that would change the project site zoning to a PUD and certify a precise development plan that would be consistent with the hazard, visual, wetland and environmentally sensitive habitat resource protection policies of the LCP. For example, a less dense development that uses alternative access routes, removes development from the ridgeline and steep slopes and minimizes grading, could be found consistent with the certified LCP.

Therefore, the Commission finds that feasible alternatives to the proposed project exist for the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the policies of the certified LCP.

### **7.3 California Environmental Quality Act (CEQA)**

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by a finding showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact that the activity may have on the environment.

As discussed above in the findings on LCP consistency, the proposed project is not consistent with the policies of the certified LCP regarding hazards, landform alteration, visual resources , and wetland protections. There are feasible mitigation measures and feasible alternatives available which would substantially lessen the significant adverse impact that the proposed development would have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

### **Exhibits:**

1. Regional Map
2. Vicinity Map
3. Parcel Map
4. Mid Coast Urban/Rural Boundary
5. Peninsula Open Space Trust (POST) Rancho Corral de Tierra
6. Site Map
7. Approved 13,000-foot-long looped waterline
8. Appeal by Commissioners Dessler and Daniels
9. Excerpts of Appeal by Kind, Kozak, Mancinelli, Perkovic, Rothschild, and Slater-Carter
10. Slope map produced by San Mateo County County on March 21, 2000
11. Etheldore Street
12. 2002 Oblique Aerial View: Vicinity of South Moss Beach Site



13. 2001 Aerial View: Vicinity of South Moss Beach Site
14. 2001 Aerial View: Vicinity of South Moss Beach Site (close-up)
15. Row Cropping on POST Rancho Corral de Tierra Land
16. View of Site and Surrounding Area from Airport Blvd.
17. Existing Viewpoint A (near intersection of Highway 1 and Cypress Ave.)
18. Viewpoint A: Photosimulation of approved development (near intersection of Highway 1 and Cypress Ave.)
19. Existing Viewpoint B (near intersection of Highway 1 and Marine Blvd.)
20. Existing Viewpoint C (near intersection of Highway 1 and southern end of Etheldore St)

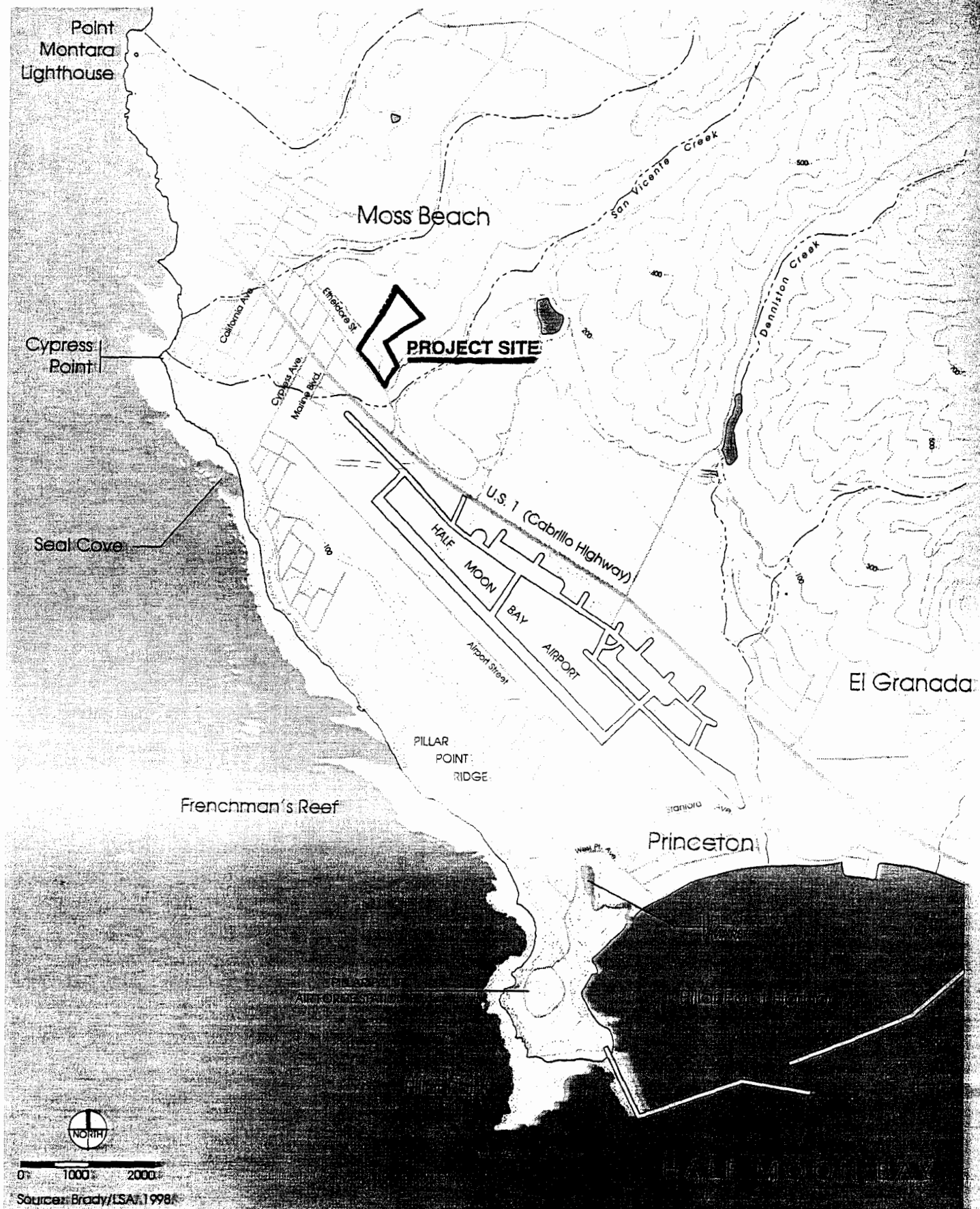
#### **APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

Peninsula Open Space Trust Website

([http://www.openspacetrust.org/POST\\_Lands/rancho\\_corral.htm](http://www.openspacetrust.org/POST_Lands/rancho_corral.htm)) 2004.

San Mateo County 2000. Final Moss Beach Highlands Environmental Impact Report. Brady LSA. January 2000.





# MOSS BEACH HIGHLANDS

EXHIBIT NO. 2

A-2-SMC-00-031  
(Moss Beach Highlands)

BRADY / LSA

pln98vpln98-462.cdr ds 3-14-00

# en ingu

**A-2-SMC-00-031**  
**(Moss Beach Highlands)**

PLN1999-00452  
037-320-270

LOCAL COASTAL  
PROGRAM AREA PLAN  
(Adopted 1980)

MONTARA

PORTOLA HEIGHTS  
SUBDIVISION

North Moss Beach  
Potential Affordable  
Housing Site

South Moss Beach  
Potential Affordable  
Housing Site

URBAN/RURAL BOUNDARY

MOSS BEACH

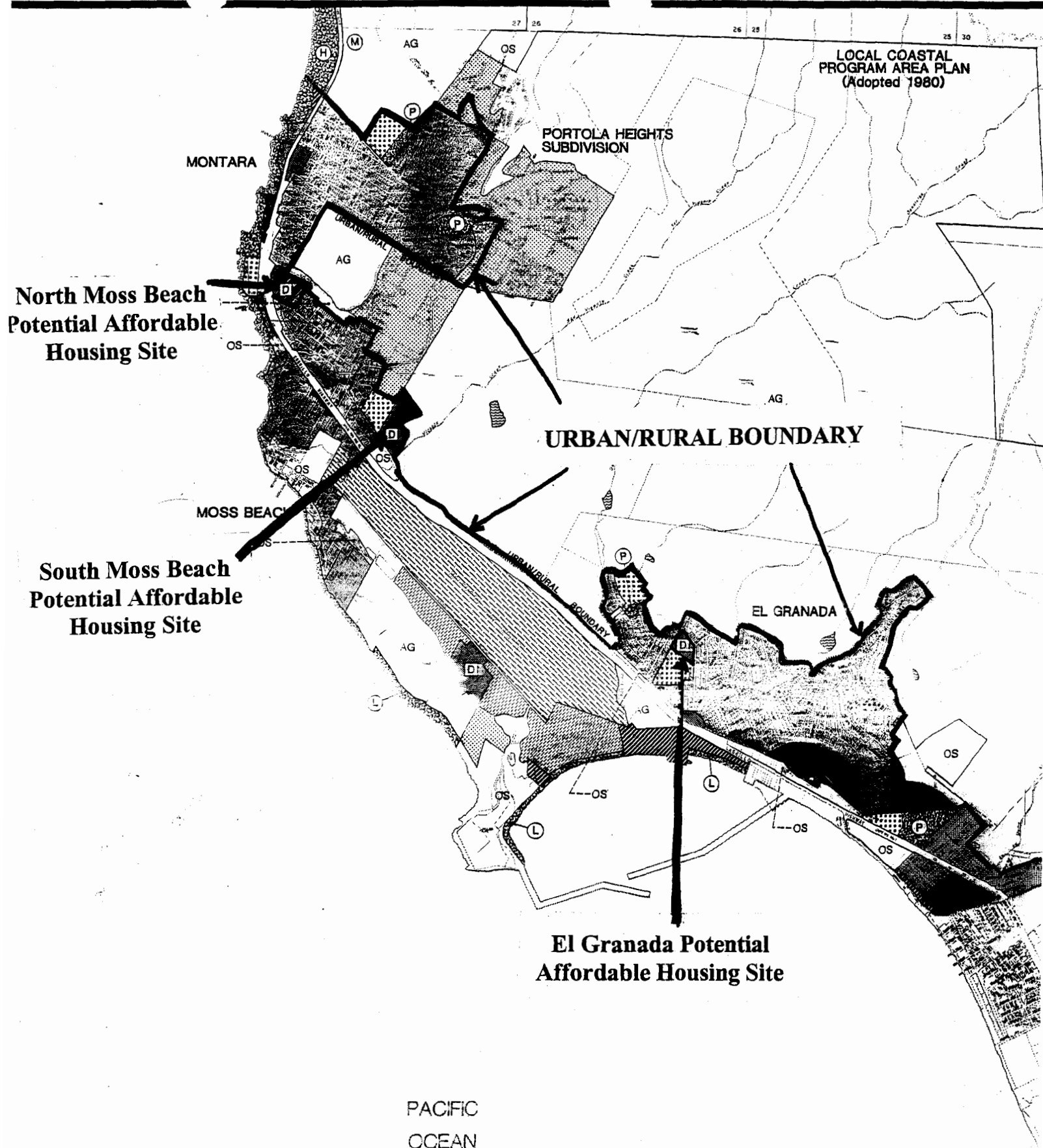
EL GRANADA

El Granada Potential  
Affordable Housing Site

PACIFIC  
OCEAN

EXHIBIT NO. 4

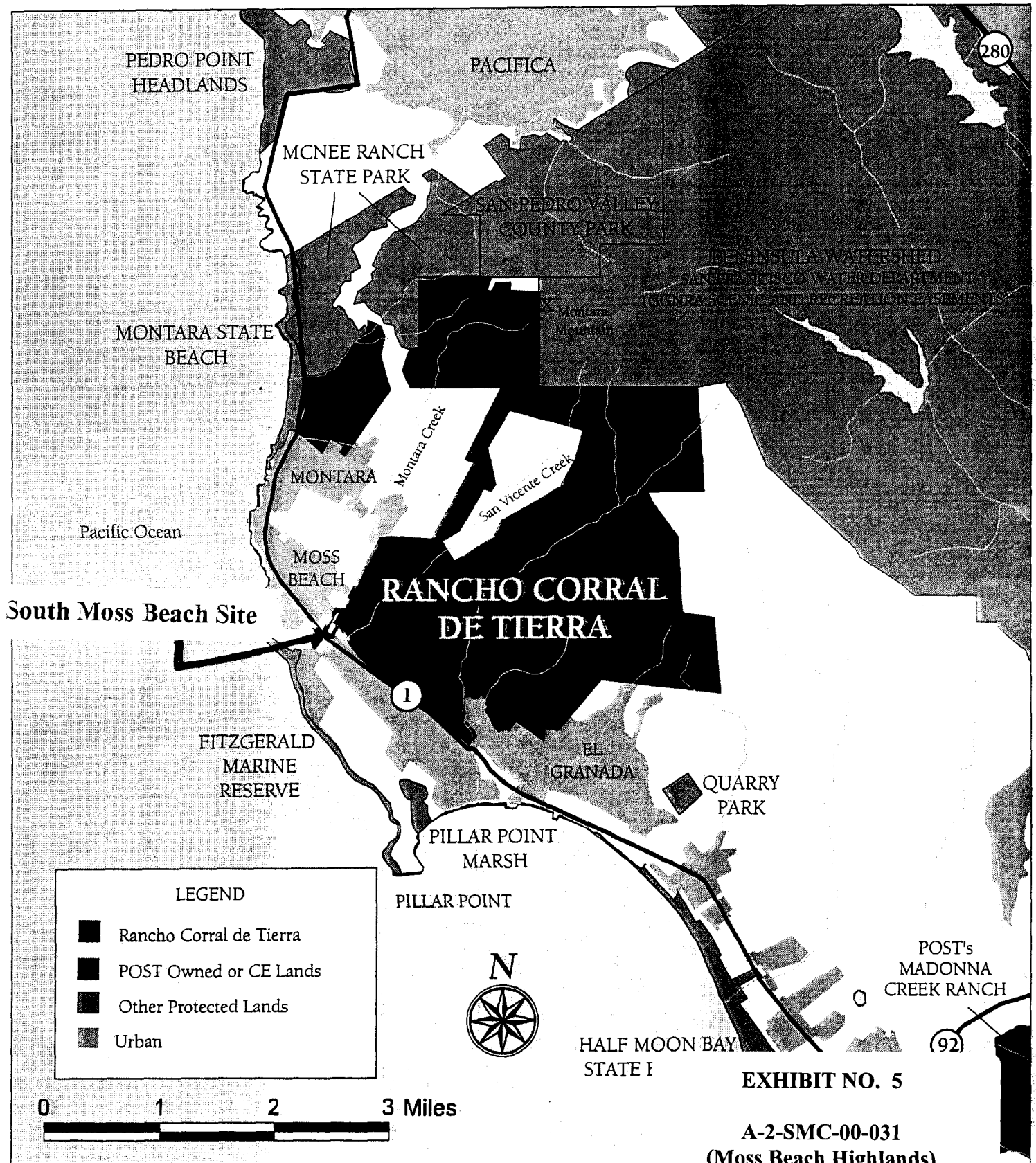
A-2-SMC-00-031  
(Moss Beach Highlands)





# Peninsula Open Space Trust

Rancho Corral de Tierra (4,262 acres)







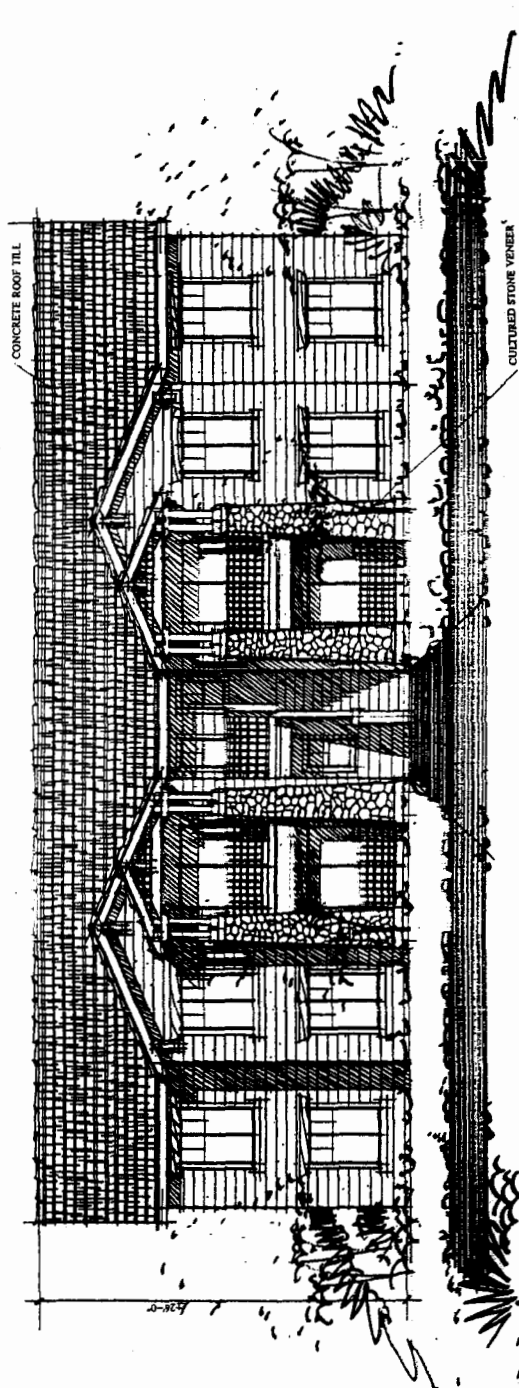
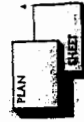
KAUFMAN BROAD  
ARCHITECTURE

MOSS BEACH

SOUTH BAY DIVISION

DATE AUGUST 1, 1997

REVISIONS  
OCTOBER 11, 1997



# MOSS BEACH SENIOR APARMENTS





KAUFMAN BROAD  
ARCHITECTURE

MOSS BEACH

ROUTE 141 DIVISION

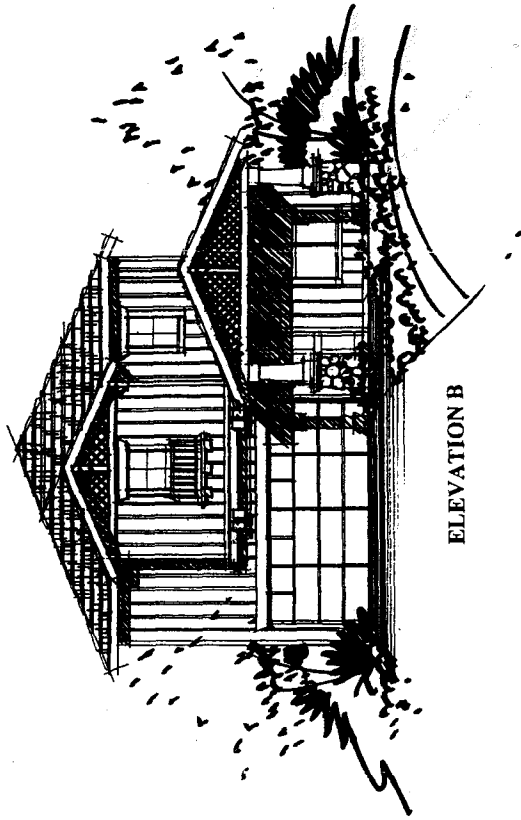
DATE AUGUST 8, 1997

REVISIONS

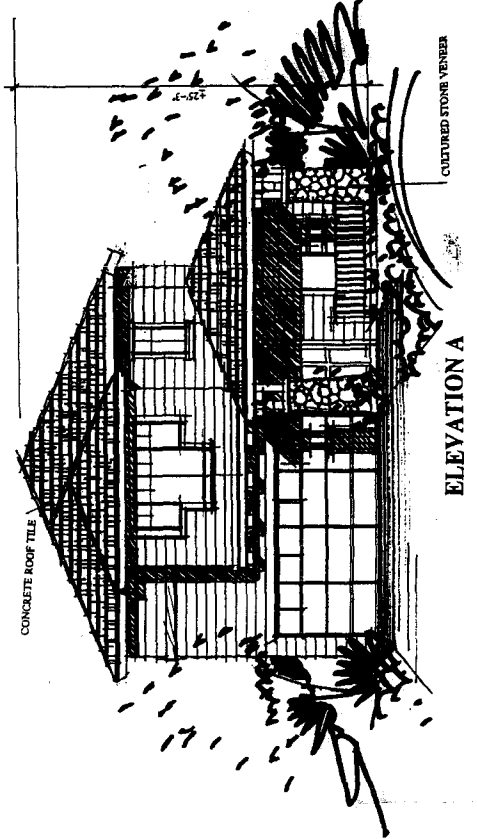
AUGUST 14, 1997  
OCTOBER 21, 1997

PLAN ONE

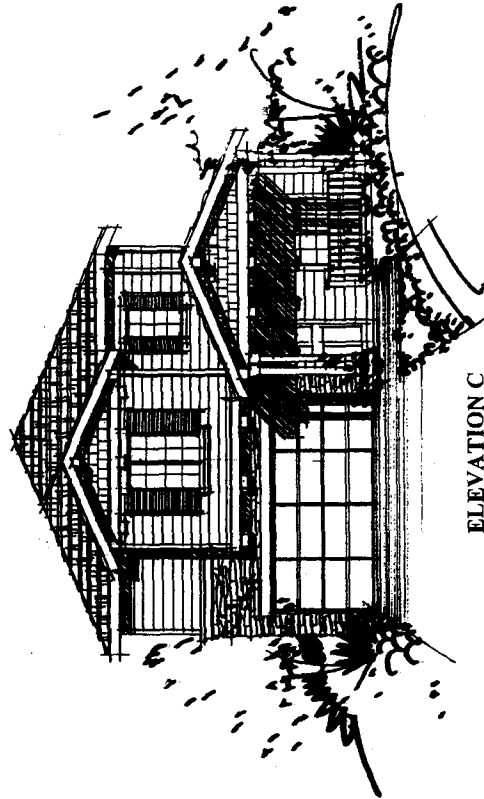
SHEET



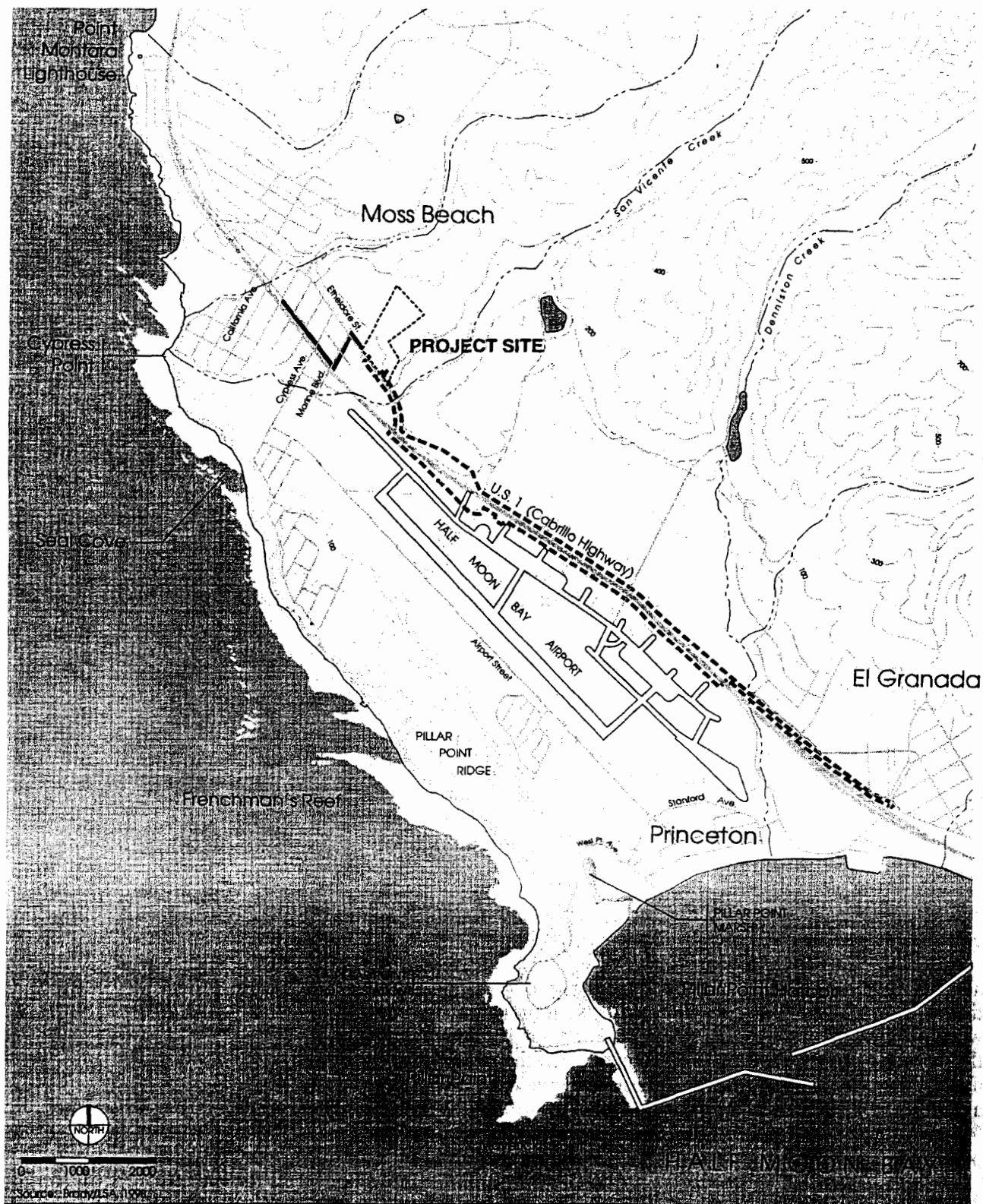
ELEVATION B



ELEVATION A



ELEVATION C



# MOSS BEACH HIGHLANDS

— Wastewater Line Extension  
 - - - Water Line Extension

**Figure III-9**  
 Water and Wastewater Extensions

## San Mateo County Planning Commission Meeting

Applicant:

File Numbers: PLN 1999-00452

EXHIBIT NO. 7

A-2-SMC-00-031  
 (Moss Beach Highlands)



## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing  
This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Commissioner Christina L. Desser

2151 Pacific Street

San Francisco, CA 94115

( 415 ) 561-2627

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port  
government: San Mateo County

2. Brief description of development being  
appealed: PLEASE SEE ATTACHED

3. Development's location (street address, assessor's parcel  
no., cross street, etc.): 1181 Etheldore Street, Moss Beach,  
CA 94038, APN 037-320-270

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special conditions: X

c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial  
decisions by a local government cannot be appealed unless  
the development is a major energy or public works project.  
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-2-SMC-00-031

DATE FILED: Sept. 7, 2000  
Coast.

DISTRICT: North Central District

H5: 4/88

EXHIBIT NO. 8

A-2-SMC-00-031  
(Moss Beach Highlands)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☒ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: August 8, 2000

7. Local government's file number (if any): PLN1999-00452

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:  
Ray Panek, Kaufman & Broad, South Bay, Inc.  
2201 Walnut Avenue, Suite 150  
Fremont, CA 94538

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION IV. Reasons Supporting This Appeal**

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

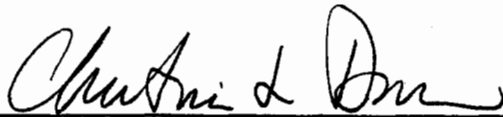
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

PLEASE SEE ATTACHED

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or  
Authorized Agent  
Christina L. Desser

Date September 7, 2000

NOTE: If signed by agent, appellant(s)  
must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

**A-2-SMC-00-031**  
**Moss Beach Highland Appeal**

**Section II, No. 2**

San Mateo County adopted changes to its coastal Land Use Plan (LUP) and zoning ordinance, requiring an amendment to its Local Coastal Plan (LCP), and a Coastal Development Permit to subdivide a 12.5-acre parcel into 59 parcels and construct:

- 55 single-family houses;
- 73 affordable senior apartments;
- a "tot lot" playground;
- a recreation building; and
- infrastructure improvements, including paved roadways and parking areas, storm drainage facilities, water and sewer service extensions, and underground power utility connections. A 13,000-foot long, looped water line connecting the site with Denniston Reservoir is also proposed as part of the project.

The approved Moss Beach Highlands residential development is at 1181 Etheldore Street at the southern edge of the unincorporated community of Moss Beach in San Mateo County.

**Section IV**

The project as approved by the County of San Mateo does not conform to the standards set forth in the county's certified Local Coastal Program, as detailed below.

The project requires an LCP amendment because it does not conform with the standards of the existing LCP. The amendment would revise Policy 3.15 d.(2)(a), Designated Affordable Housing Sites, to allow over 50 percent of the units to be low income housing. Currently, the policy requires development to include 30 percent of the units to be low income and 20 percent moderate income. The proposed development, with 73 of the 128 units being low income, includes 57 percent low income units, and is therefore not consistent with the existing LUP.

The project requires rezoning. The site is currently zoned Affordable Housing/Design Review/Coastal Development (R-3-A/S-5/DR/CD), which allows 110 to 218 low and moderate income units at the project site. While the 128 units of the approved project would be within that range of the current zoning, the proposed rezoning to Planned Unit Development (PUD) allows more flexibility in lot sizes, setbacks, and other zoning standards. Therefore, because rezoning is required, the project is not consistent with the existing zoning. San Mateo County has not yet requested an LCP amendment. Until such time that the Commission certifies the required amendment to the LCP, the approved development cannot be found to be in conformity with the LCP.

Policy 8.7 (Development on Skylines and Ridgelines) prohibits the location of development in whole or in part, on a skyline or ridgeline, or where it will project above a skyline or ridgeline, unless there is no other developable building site on the parcel. Single-family houses that are included in the approved project would project above the ridgeline. The development could be located and designed so that it is not above the ridgeline as required by Policy 8.7.

Policy 8.13a.(1) (Special Design Guidelines for Coastal Communities, Montara-Moss Beach-El Granada) requires that structures be designed to fit the topography of the site and do not require extensive cutting, grading, or filling for construction. The approved development requires 92,600 cubic feet of combined cut and fill for road construction and building sites. The level building pads created for the single-family houses, which have slab foundations, require extensive grading. To be consistent with Policy 8.13a the development should be designed to minimize grading.

Policies 7.11, 7.12, 7.13, 7.16, 7.17, and 7.18 establish buffer zones and performance standard for riparian corridors and wetlands. Grading and other proposed development may be within buffer zones or cause impacts to buffer zones that would not be consistent with these policies.

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing  
This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Commissioner Paula Daniels, Kudo & Daniels, LLP  
12400 Wilshire Blvd., Suite 400  
Los Angeles, CA 90025-1023 (310 ) 442-7900  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port  
government: San Mateo County

2. Brief description of development being  
appealed: PLEASE SEE ATTACHED.

3. Development's location (street address, assessor's parcel  
no., cross street, etc.): 1181 Etheldore Street, Moss Beach  
CA 94038, APN 037-320-270, San Mateo

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: X
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial  
decisions by a local government cannot be appealed unless  
the development is a major energy or public works project.  
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-2-SMC-00-031

DATE FILED: Sept. 7, 2000

DISTRICT: North Central Coast District

H5: 4/88



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a.    Planning Director/Zoning Administrator      c.    Planning Commission  
b. X City Council/Board of Supervisors      d.    Other \_\_\_\_\_

6. Date of local government's decision: August 8, 2000

7. Local government's file number (if any): PLN1999-00452

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

- a. Name and mailing address of permit applicant:  
Ray Panek, Kaufman & Broad, South Bay, Inc.  
2201 Walnut Avenue, Suite 150  
Fremont, CA 94538

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT  
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

PLEASE SEE ATTACHED

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: *Paula Daniels*  
Appellant or Agent PAULA DANIELS

Date: September 7, 2000

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**A-2-SMC-00-031**  
**Moss Beach Highland Appeal**

**Section II, No. 2**

San Mateo County adopted changes to its coastal Land Use Plan (LUP) and zoning ordinance, requiring an amendment to its Local Coastal Plan (LCP), and a Coastal Development Permit to subdivide a 12.5-acre parcel into 59 parcels and construct:

- 55 single-family houses;
- 73 affordable senior apartments;
- a "tot lot" playground;
- a recreation building; and
- infrastructure improvements, including paved roadways and parking areas, storm drainage facilities, water and sewer service extensions, and underground power utility connections. A 13,000-foot long, looped water line connecting the site with Denniston Reservoir is also proposed as part of the project.

The approved Moss Beach Highlands residential development is at 1181 Etheldore Street at the southern edge of the unincorporated community of Moss Beach in San Mateo County.

**Section IV**

The project as approved by the County of San Mateo does not conform to the standards set forth in the county's certified Local Coastal Program, as detailed below.

The project requires an LCP amendment because it does not conform with the standards of the existing LCP. The amendment would revise Policy 3.15 d.(2)(a), Designated Affordable Housing Sites, to allow over 50 percent of the units to be low income housing. Currently, the policy requires development to include 30 percent of the units to be low income and 20 percent moderate income. The proposed development, with 73 of the 128 units being low income, includes 57 percent low income units, and is therefore not consistent with the existing LUP.

The project requires rezoning. The site is currently zoned Affordable Housing/Design Review/Coastal Development (R-3-A/S-5/DR/CD), which allows 110 to 218 low and moderate income units at the project site. While the 128 units of the approved project would be within that range of the current zoning, the proposed rezoning to Planned Unit Development (PUD) allows more flexibility in lot sizes, setbacks, and other zoning standards. Therefore, because rezoning is required, the project is not consistent with the existing zoning. San Mateo County has not yet requested an LCP amendment. Until such time that the Commission certifies the required amendment to the LCP, the approved development cannot be found to be in conformity with the LCP.

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Policy 8.13a.(1) (Special Design Guidelines for Coastal Communities, Montara-Moss Beach-El Granada) requires that structures be designed to fit the topography of the site and do not require extensive cutting, grading, or filling for construction. The approved development requires 92,600 cubic feet of combined cut and fill for road construction and building sites. The level building pads created for the single-family houses, which have slab foundations, require extensive grading. To be consistent with Policy 8.13a the development should be designed to minimize grading.

Policies 7.11, 7.12, 7.13, 7.16, 7.17, and 7.18 establish buffer zones and performance standard for riparian corridors and wetlands. Grading and other proposed development may be within buffer zones or cause impacts to buffer zones that would not be consistent with these policies.

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

**APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing  
This Form.

**SECTION I. Appellant(s)**

Name, mailing address and telephone number of appellant(s):

[See Attachment A]

Zip

( )  
Area Code

Phone No.

**SECTION II. Decision Being Appealed**

1. Name of local/port  
government: San Mateo County

2. Brief description of development being  
appealed: Moss Beach Highlands Residential Development

3. Development's location (street address, assessor's parcel  
no., cross street, etc.): APN 037-320-270

1181 Etheldore Street, Moss Beach, CA 94038

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: ☒ [See County letter]
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial  
decisions by a local government cannot be appealed unless  
the development is a major energy or public works project.  
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

H5: 4/88

**EXHIBIT NO. 9**

**A-2-SMC-00-031  
(Moss Beach Highlands)**

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☒ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: 8 August 2000

7. Local government's file number (if any): PLN 1999-00452

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Ray Panel:

Kaufman & Broad South Bay, Inc.

2201 Walnut Avenue, Suite 150

Fremont, CA 94538

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

- (1) [See attachment B to follow]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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(3) \_\_\_\_\_  
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\_\_\_\_\_  
(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

[See Attachment C.]

**Note:** The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

## SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

James A. Kind Hungry for Justice Signature of Appellant(s) or  
Paul F. Farnick Date 5 SEPTEMBER 2000 Authorized Agent

Chad Hogue

NOTE: If signed by agent, appellant(s) must also sign below.

## Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

**Signature of Appellant(s)**

**Date**

## **Attachment A – Appellants**

### **Appeal from Coastal Permit Decision of Local Government**

**San Mateo County File Number: PLN 1999-00452**

**Moss Beach Highlands Residential Development**

Date: 5 September 2000

#### **Section I. Appellants(s)**

Name, mailing address and telephone number of appellants(s):

Gary Kind  
Post Office Box 135  
Moss Beach, CA 94038-0135  
(650) 728-7812

Chuck Kozak  
Post Office Box 370702  
Montara, CA 94037-0702  
(650) 728-8239

Rocco L. Mancinelli  
1030 Etheldore Street  
Moss Beach, CA 94038  
(650) 728-8152

Paul Perkovic  
Post Office Box 371149  
Montara, CA 94037-1149  
(650) 728-9500

Lynn Rothschild  
1030 Etheldore Street  
Moss Beach, CA 94038

Kathryn Slater-Carter  
Post Office Box 370321  
Montara, CA 94037-0321  
(650) 728-5449

Appellants are acting as individuals and not on behalf of the local elected positions they hold on the Montara Sanitary District Board of Directors or the Midcoast Community Council.



## **Attachment B – Identification of Other Interested Persons**

### **Appeal from Coastal Permit Decision of Local Government**

**San Mateo County File Number: PLN 1999-00452**

**Moss Beach Highlands Residential Development**

Date: 5 September 2000

#### **Section III. Identification of Other Interested Persons**

- a. Name and mailing address of permit applicant:

Ray Panek  
Kaufman & Broad South Bay, Inc.  
2201 Walnut Avenue, Suite 150  
Fremont, CA 94538

- b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

[The names and mailing addresses of over 200 persons who appeared in person before a public hearing, appeared by a representative, or submitted written material will be supplied separately in a machine-readable format for the convenience of the Commission.]

[In addition, a separate submittal will list local elected officials who endorse this appeal.]

## **Attachment C – Reasons Supporting This Appeal**

### **Appeal from Coastal Permit Decision of Local Government**

**San Mateo County File Number: PLN 1999-00452  
Moss Beach Highlands Residential Development**

Date: 5 September 2000

#### **Section IV: Reasons Supporting This Appeal**

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See the following documents attached:

#### **Executive Summary of Appeal**

#### **Detailed List of Local Coastal Program Policies Violated by Project**

In addition, the letter dated 11 July 2000 from Paul Perkovic to the San Mateo County Board of Supervisors provides a narrative background of significant issues related to this proposed project, without citing specific Local Coastal Program policy language.

That letter includes as attachments excerpts from the Fitzgerald Marine Reserve Draft Master Plan, an earlier letter to the Board of Supervisors dated 6 June 2000, a Memorandum on Significant Issues Regarding the Proposed Moss Beach Highlands Project (dated 6 June 2000, revised 11 July 2000), and a letter to Coastside County Water District dated 9 June 2000.

All reasons in the narrative that are based on Local Coastal Program policies or implementing ordinances are also included in the appeal. This material should be part of the public record on this project forwarded to the Commission by the County. If it was not included by the County, a copy will be submitted to the Commission under separate cover.

Moss Beach Highlands Project  
Appeal to the Coastal Commission

File #1-SMC-99-202

September 7, 2000

# Table of Contents

<b><u>EXECUTIVE SUMMARY</u></b> .....	3
<b><u>INTRODUCTION</u></b> .....	4
<b><u>CHAPTER 1: LOCATING AND PLANNING NEW DEVELOPMENT</u></b> .....	5
POLICY 1.18 – LOCATION OF NEW DEVELOPMENT.....	5
<b><u>CHAPTER 2: PUBLIC WORKS COMPONENT</u></b> .....	9
POLICY *2.6 – CAPACITY LIMITS .....	9
<b><u>CHAPTER 3: HOUSING COMPONENT</u></b> .....	9
POLICY 3.1 – SUFFICIENT HOUSING OPPORTUNITIES.....	9
POLICY 3.2 – NON-DISCRIMINATION.....	10
POLICY 3.3 – BALANCED DEVELOPMENTS .....	11
POLICY 3.4 – DIVERSE HOUSING OPPORTUNITIES.....	11
POLICY 3.5 – REGIONAL “FAIR SHARE” .....	12
POLICY 3.6 – ALLOCATION OF AFFORDABLE UNITS.....	13
POLICY 3.13 – MAINTENANCE OF COMMUNITY CHARACTER.....	14
POLICY 3.15 – DESIGNATED AFFORDABLE HOUSING SITES .....	16
<b><u>CHAPTER 5: AGRICULTURE COMPONENT</u></b> .....	17
POLICY *5.14 - MASTER LAND DIVISION PLAN.....	17
POLICY *5.15 - MITIGATION OF LAND USE CONFLICTS.....	17
<b><u>CHAPTER 7: SENSITIVE HABITAT COMPONENT</u></b> .....	18
POLICY *7.1 – DEFINITION OF SENSITIVE HABITATS.....	18
POLICY 7.2 – DESIGNATION OF SENSITIVE HABITATS .....	19
POLICY *7.3 – PROTECTION OF SENSITIVE HABITATS.....	19
POLICY *7.4 – PERMITTED USES IN SENSITIVE HABITATS.....	20
POLICY 7.13 – PERFORMANCE STANDARDS IN BUFFER ZONES .....	20
POLICY 7.18 – ESTABLISHMENT OF BUFFER ZONES .....	21
POLICY 7.33 – PERMITTED USES OF RARE AND ENDANGERED SPECIES .....	21
POLICY 7.34 – PERMIT CONDITIONS.....	21
POLICY 7.35 – PRESERVATION OF CRITICAL HABITATS .....	22
POLICY 7.36 – SAN FRANCISCO GARTER SNAKE.....	22
<b><u>CHAPTER 8: VISUAL RESOURCES COMPONENT</u></b> .....	22
POLICY 8.1 – DEFINITION OF LANDFORMS .....	22
POLICY *8.5 – STRUCTURES.....	23
POLICY *8.7 – RIDGELINES AND HILLTOPS .....	23
POLICY 8.9 - TREES .....	24
POLICY 8.12 – GENERAL REGULATIONS.....	24
POLICY 8.13 – SPECIAL DESIGN GUIDELINES FOR COASTAL COMMUNITIES .....	24
POLICY 8.28 – DEFINITION OF SCENIC CORRIDORS .....	25
POLICY 8.30 – DESIGNATION OF COUNTY SCENIC ROADS AND CORRIDORS .....	25
POLICY 8.32 – REGULATION OF SCENIC CORRIDORS IN URBAN AREAS .....	26
<b><u>CHAPTER 9: HAZARDS COMPONENT</u></b> .....	26
POLICY 9.1 – DEFINITION OF HAZARD AREA.....	26
POLICY 9.18 – REGULATION OF DEVELOPMENT ON 30% OR STEEPER SLOPES.....	26
<b><u>CONCLUSION</u></b> .....	27

## **Executive Summary**

San Mateo County has attempted to substitute mitigation of the significant environmental impacts caused by this project for LCP compliance. This project is replete with instances of callous disregard for the letter and intent of the LCP and Coastal Act. Prominent among the issues brought forth in this Appeal are:

- Visual Impact, Ridgeline issues (LCP Policy 8.7, Measure A).
- Traffic – local and cumulative (LCP Policies 1.18 and 3.13)
- Damage to Wetlands and Sensitive Habitat areas both on and offsite (Policies as contained in LCP Chapter 7).
- Excessive and extensive Grading done to the Hilltop and Ridgeline (LCP Policies 1.18 and 8.13 - a.1).
- Project and structures are not in scale with the character of their setting and does not fit the character of the community (LCP Policies 3.13, 8.14 – a.4, and 8.5).
- Possible lack of Water for the Project (LCP Policy 1.18c).
- Pollution and Runoff to San Vicente Creek and the Fitzgerald Marine Reserve (LCP Policy 7.3-b).
- Does not provide affordable housing as described in the LCP (LCP Chapter 3 Policies).
- Inappropriate site for Seniors (LCP Policy 1.18).

The appellants request a finding of significant issue for the CDP and subsequent denial or remanding to the county for each of the following: (1) the grading permit, (2) the rezoning to PUL, (3) the zoning text and map changes, (4) the subdivision, and (5) LCP amendment. The following is a brief summary of nonconformity to LCP Policies delineated in this appeal:

1. Chapter 1: Locating and Planning New Development, Policy 1.18: There are insufficient public and private resources, particularly water and roadways.
2. Chapter 2: Public Works Component, Policy \*2.6: As approved, the water supply infrastructure will exceed that needed to serve build-out of the LCP.
3. Chapter 3: Housing Component, Policies 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.13, 3.15: These policies are meant to meet housing needs for persons of low and moderate incomes who can be expected to work in the coastal zone. This project does NOT meet the requirements for low and moderate income workers on the coastside because it only contains a provision for low-income Senior rental units.
4. Chapter 5: Agriculture Component, Policies \*5.14, \*5.15: No master plan is evident for this site and there appears to be conflicts between the soils present and the types of uses allowed for these soil types.
5. Chapter 7: Sensitive Habitat Component, Policies 7.1, 7.2, 7.3, 7.4, 7.13, 7.18, 7.33, 7.34, 7.35: The project encompasses and is adjacent to sensitive habitats for the red-legged frog and the San Francisco Garter Snake, both of which are federally recognized as endangered species. The site is also contiguous with a wetland and a perennial creek, both of which fall under the protection of the LCP under the policies in Chapter 7.
6. Chapter 8: Visual Resources Component, Policies 8.1, 8.7, 8.9, 8.12, 8.13: A significant number of homes to be constructed at the site will protrude above the ridgeline and will be prominent from Highway 1 from 3 main vantage points near the site. The houses are so prominent above the ridgeline that they can be seen from Princeton and Clipper Ridge. This project severely violates each and every part of LCP policy 8.7 and should be denied on that basis alone.
7. Chapter 9: Hazards Component, Policies 9.1, 9.18: Both the Project Site and the adjacent parcels have earthquake faults running through them as shown in the Geotechnical Hazards Land Capability Map, San Mateo County, September, 1976.
8. Conclusion: Clear alternatives exist ranging from reducing the size and density of the project to returning it to its original PAD zoning.

## **Introduction**

APPEAL: San Mateo County CDP  
 PLN 1999-00452  
 File #1-SMC-99-202

The proposed project does not comply with many of the policies found in the June, 1998<sup>1</sup>, San Mateo County Local Coastal Program (LCP) and therefore the Coastal Development Permit (CDP) cannot be granted. The CDP permit is required to "ensure compliance of all project elements with all applicable LCP policies."<sup>2</sup>

There are a significant number of LCP policies with which this project is not in compliance. The nonconformity has been raised in either oral or written testimony in response to the Draft EIR, the Final EIR, the Planning Commission hearings, and Board of Supervisors hearings.

There are also many policies in the General Plan with which this subdivision/project also does not comply. The critical difference between a general plan and the LCP is that nonconformance with the Coastal Act, evidenced by noncompliance with the policies of the LCP cannot be mitigated through a finding of "overriding concern". Nonconformance with a general plan can be mitigated or overridden. There is nothing in either the San Mateo County LCP nor the California Coastal Act that authorizes the subordination of the LCP policies or Coastal Act to "overriding" concerns.

What follows is each LCP policy, as noted above in numerical order, with a brief description of why this project is not in conformance. An important distinction must be made between the policies with an asterisk and those without one. Policies denoted with an asterisk were enacted by a voter initiative and cannot be changed without a countywide vote. A full explanation is in policy \*1.31. References to the Montara - Moss Beach - El Granada Community Plan are made because it was incorporated into the LCP by Policy 1.5(a). It has been amended to conform to the LCP but contains policies not in the LCP. This project must conform to the Community Plan policies in addition to the LCP policies.

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<sup>1</sup> The previous LCP version of policies 8.5, 8.7, 8.13, 9.18 applies as per provisional appendix, June, 1998 LCP. Refer to this document, pages PA.1 – PA.13 for further clarification.

<sup>2</sup> County of San Mateo: Planning Commission Staff Report, Feb. 2, 2000; p.2.

## Policy \*8.5 – Structures

*Minimize the number of structures located in open field and grassland areas; require that structures be designed in scale with the rural character of the region, and that they be clustered near existing natural or manmade vertical features.*

## Policy \*8.7 – Ridgelines and Hilltops

### 8.7(a)

*Prohibit the location of new development on ridgelines and hilltops unless there is no other buildable area on the parcel.*

### 8.7(b)

*Prohibit the removal of tree masses which would destroy the silhouette of ridge line and hilltop forms.*

### 8.7(c)

*Restrict the height of structures to prevent their projection above ridge line or hilltop silhouettes.*

### 8.7(d)

*Prohibit land divisions which would create parcels whose only building site would be on ridge lines or hilltops.*

Contrary to this policy the majority of the new parcels will be on either the ridgeline or the hilltop. Starting at the bottom of the project, along Etheldore Street, careful examination of the grading plan reveals the retention pond will be created by cutting away the toe of the ridge. Each new home site from the pond up to midway across the parcel will be graded and cut from the ridge, as will the road. Then the road and the house sites will sit on extensive fill added to the existing contours -- the road bed will be in excess of 10 feet, and in one area, up to 22 feet above existing grade. The pads on the hilltop will be created by reducing the hilltop in excess of 10 ft. The house pads on sloped areas of the existing site (in the front, going up the rode and in the rear near the seep) will be raised significantly with fill.

A significant number of homes will protrude above the ridge and will be prominent from Highway 1 from 3 main vantage points near the site [Attachment J – Figures A, B, 1-6]. The houses are so prominent above the ridgeline that they can be seen from Princeton and Clipper Ridge. This project violates each and every part of this policy and should be denied on that basis alone.

Two separate presentations were given at the Planning Commission and Board of Supervisor's meetings demonstrating the clear violation of Policy \*8.7. These presentations included photographs from 3 nearby locations along Highway 1. Each location's photographs [Attachment J – Figures 1-6] progressed from (1) the site with story poles, followed by (2) how the location would look without the trees (which will be removed for construction), to (3) How it would look with houses from that viewpoint. Lots in clear violation of Policy \*8.7 are 49, 50,

51, 52, 53, 14, 15, 16, 17, 18, 19, 20, 21, and 22 [Attachment J]. Others will probably in violation but the story poles erected by the builder were insufficient to make this determination.

It should be noted that the County's photo montage attempts to hide the violation of Policy \*8.7 by placing "landscaped" trees in from of the structures that are in violation. It is our understanding that Measure A does not allow trees be used in this manner. Structures in violation are structures in violation.

The County and the builder acknowledge that the project violates Policy \*8.7, but the project was approved by the County Board of Supervisors, in spite of this clear violation.

It should also be noted that Policy 8.7 is an asterisked policy. Under LCP Policy 1.31a, "Local Coastal Program policies, or subsections of such policies, identified by an asterisk (\*), may be amended or repealed only after approval by a majority of the voters of San Mateo County, voting in a valid election..."

### **Policy 8.9 - Trees**

#### **8.9(d)**

*Protect trees specifically selected for their visual prominence and their important scenic or scientific qualities.*

#### **8.9(e)**

*Prohibit the removal of trees in scenic corridors except by selective harvesting*

Several of the trees slated for removal have visual prominence from the Highway 1 Scenic Corridor along Moss Beach. These are the trees located on the south side of the western edge of the parcel. Ridgeline and hilltop subdivision and development compounded by tree removal are each contrary to the LCP. This project must be redesigned to conform to Coastal Zone protections.

### **Policy 8.12 – General Regulations**

#### **8.12 (a)**

*Apply the Design Review (DR) Zoning District to urbanized areas of the Coastal Zone.*

#### **8.12(b)**

*Employ the design criteria set forth in the Community Design Manual for all new development in urban areas.*

### **Policy 8.13 – Special Design Guidelines for Coastal Communities**

*The following special design guidelines supplement the design criteria in the Community Design Manual:*



**8.13(a.1)**

*Design structures which fit the topography of the site and do not require extensive cutting, grading, or filling for construction.*

**8.13(a.4)**

*Design structures which are in scale with the character of their setting and blend rather than dominate or distract from the overall view of the urban landscape.*

Attached are the pages of the Community Design Manual that illustrate the complete lack of compliance of this project [Attachment F]. This project requires extensive grading, cutting and filling for each home site. The homes are monotonously placed in an identical fashion on each lot. The driveway configuration diminished the available open space among the homes. The homes offer little variation in design or material. It is as if the designer mistook the "not this" illustrations for the desired "this" example. The market rate homes dominate the ridgeline (as shown previously) and clearly distract from the overall view.

A color grading schematic is included that was presented at the last Board of Supervisors hearing. [Attachment G] It illustrates that approximately 75% of the site is either graded or filled. The hilltop is reduced in one area by over 10 feet, as is the lower ridgeline. The face of the hill, with an existing slope approaching 30% will have up to 22 ft. of fill creating areas with 50% slope. One of the story poles starts one foot below the natural surface of the site! This means that for a one story house, they would have to grade 14 to 16 feet below the present ground level to get to the desired level to begin construction on that house. The topography of this parcel will not be recognizable if this project is completed as proposed.

The row of houses stacked up the hilltop and ridgeline will not resemble any part of the existing Midcoast. They will both dominate and distract from the Coastal visual resources. This project is in direct contradiction with the above policies and should be denied.

**Policy 8.28 – Definition of Scenic Corridors**

*Define scenic corridors as the visual boundaries of the landscape abutting a scenic highway and which contain outstanding views, flora, and geology, and other unique natural or manmade attributes and historical and cultural resources affording pleasure and instruction to the highway traveler.*

**Policy 8.30 – Designation of County Scenic Roads and Corridors****8.30(a)**

*Expand existing County Scenic Corridors to include the visual limits of the landscape abutting the scenic road.*

**8.30(b)**

*Designate County Scenic Roads and Corridors as shown on the Scenic Roads and Corridors Map for the Coastal Zone. These are: Coast Highway north of Half Moon Bay city limits (State Route 1)...*

**Policy 8.32 – Regulation of Scenic Corridors in Urban Areas**

**8.32(a)**

*Apply the regulations of the Design Review (DR) Zoning Ordinance.*

**8.32(b)**

*Apply the design criteria of the Community Design Manual.*

**8.32(c)**

*Apply specific design guidelines for Montara, Moss Beach, ... as set forth in Urban Design Policies of the LCP.*

**Chapter 9: Hazards Component**

**Policy 9.1 – Definition of Hazard Area**

*Define hazardous areas as fault zones and...steep slopes over 30%.*

This area was identified as a geologic hazard in the Community Plan Geotechnical Land Capability map [Attachment H]. Only very low occupancy and non-structural uses are recommended. PAD zoning or low density R-1 was typically applied to lands with these limitations. The current United States Geological Survey map (USGS) supports this assessment [Attachment I]. This project, along with 2 other large affordable housing sites for the County sits between 2 significant earthquake faults. Although these sites can possibly be safely engineered it is interesting to observe that few other County affordable housing sites exist -- except in Colma and both areas are subject to greater earthquake risk than other parts of the County.

**Policy 9.18 – Regulation of Development on 30% or Steeper Slopes**

*Prohibit, unless no other alternatives exist, development (including land divisions which would create parcels exclusively) on slopes of 30% or greater....*

The project does contain slopes of 30% or greater in which a proposed road runs through. In order to mitigate this, extensive grading and fill is being proposed.

## **Conclusion**

A clear alternative exists -- reduce the size and density of this project. Find areas that are not steep, are not on hilltops, are not on ridgelines, do not require tree cutting, do not require massive grading cut and fill for building sites, and do not impinge on sensitive habitats or visual resources. Create a project that fits within the community character and has the required agricultural protection buffers. In short, design a project that meets all the rules.

However, it may be that in its haste to designate an affordable housing site the County chose an inappropriate site. It may be that this site should revert back to its original PAD zoning and the County should find other creative means to address the affordable housing situation. Some are even specified in the LCP: policy 3.12, rental assistance to needy families; policy 3.13 Prohibits the destruction of existing structures providing affordable housing; and policy 3.23 requires that any multiple family rental reserve 20% of the units be reserved for affordable housing.

This project violates both the intent and the letter of the LCP. These are not impacts that can be mitigated or found to be of less importance than other political agendas. The LCP is the local plan for implementation of an initiative overwhelmingly voted in by California voters.

# Moss Beach Highlands Site Plan

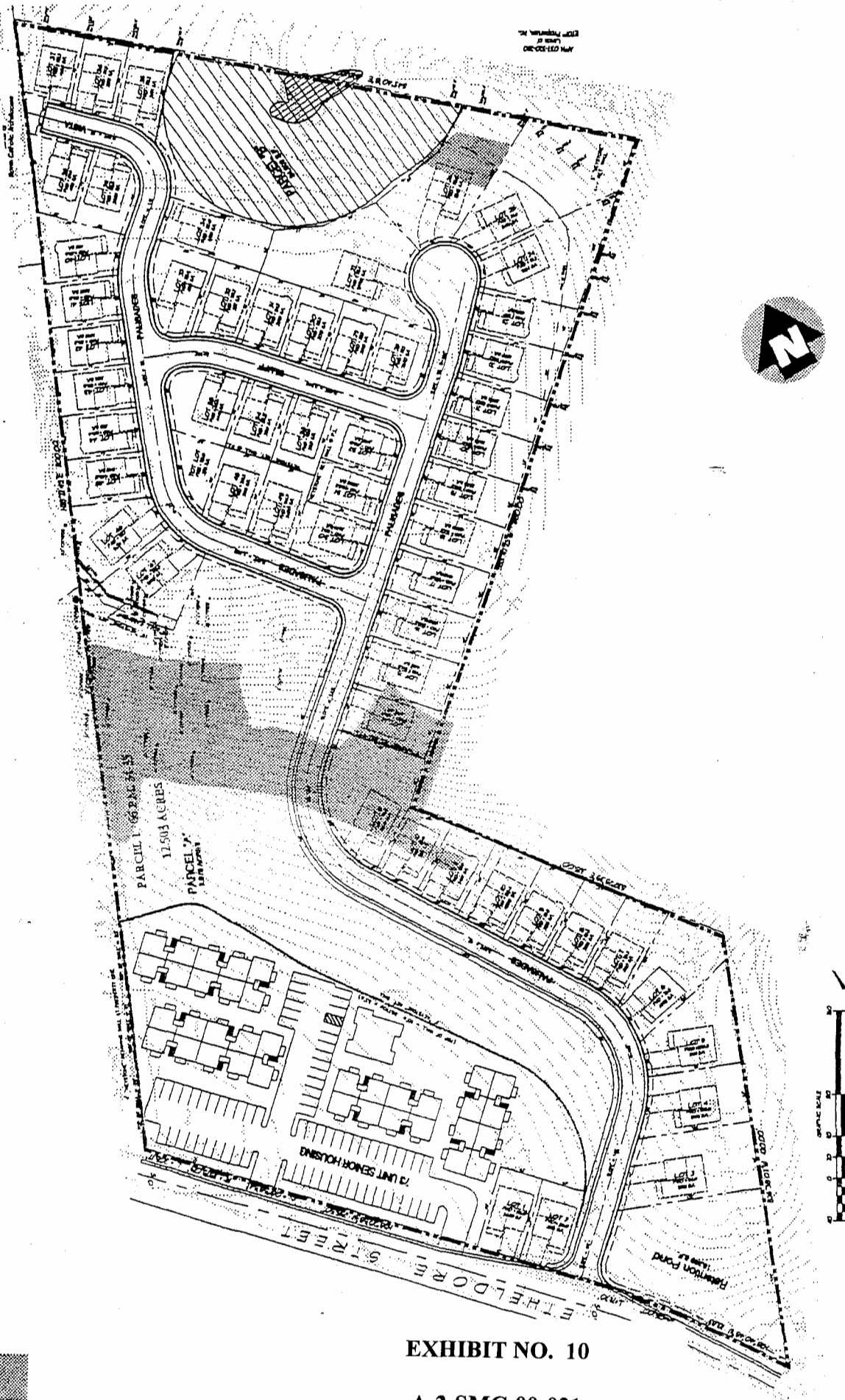


EXHIBIT NO. 10

A-2-SMC-00-031  
(Moss Beach Highlands)

Source: Knutson and Boud, 2000



**EXHIBIT NO. 11**

**A-2-SMC-00-031  
(Moss Beach Highlands)**



2002 Oblique Aerial View: Vicinity of South Moss Beach Site

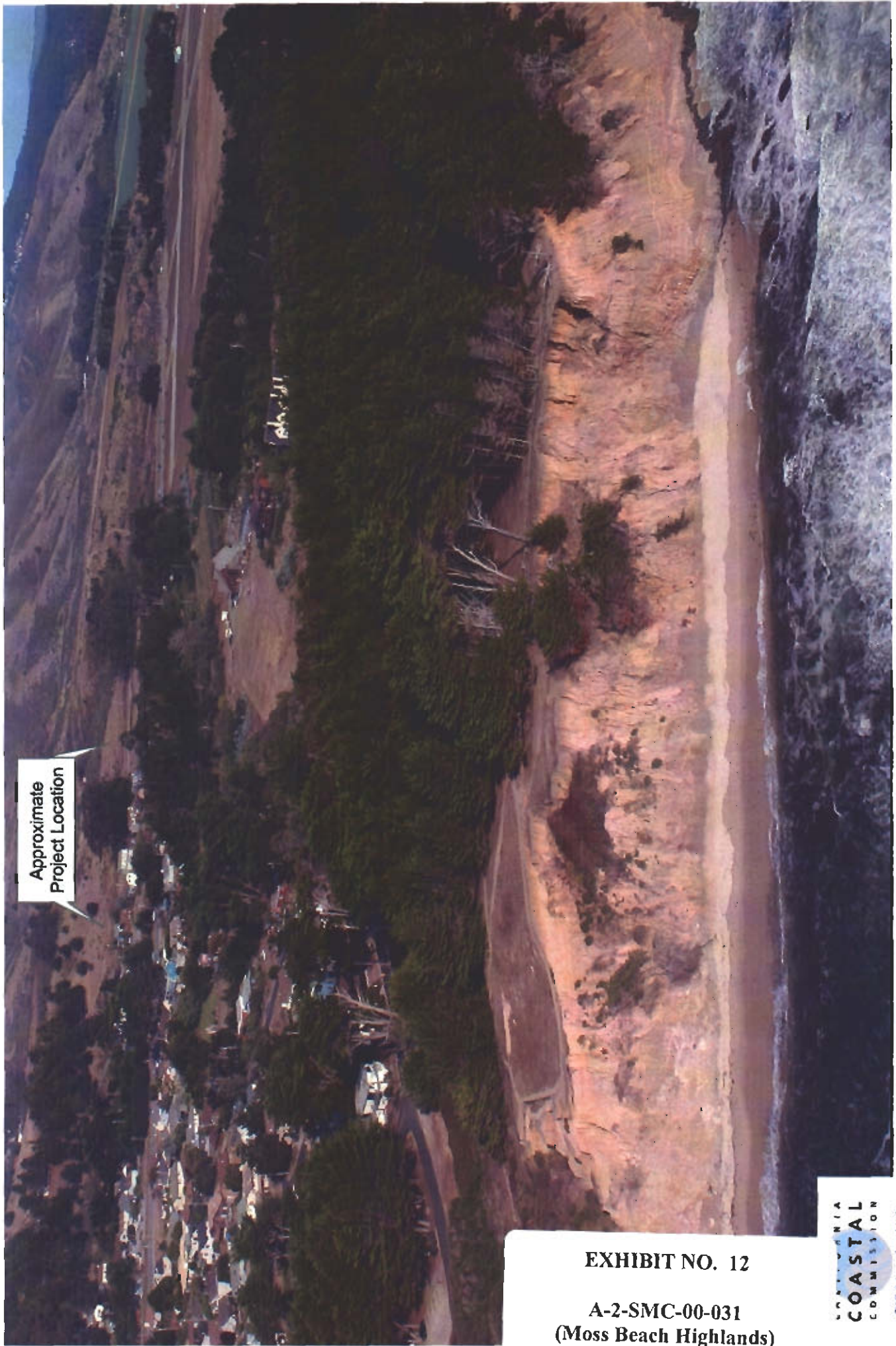


EXHIBIT NO. 12

A-2-SMC-00-031  
(Moss Beach Highlands)

CALIFORNIA  
COASTAL  
COMMISSION

GIS/Mapping Unit  
Technical Services Division

Note: Locations Approximate, For Illustrative Purposes Only.

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California Coastal Records Project,  
[www.californiacoastline.org](http://www.californiacoastline.org)



## 2001 Aerial View: Vicinity of South Moss Beach Site



**EXHIBIT NO. 13**

**A-2-SMC-00-031  
(Moss Beach Highlands)**

CALIFORNIA  
**COASTAL**  
COMMISSION

GIS/Mapping Unit  
Technical Services Division

Note: Locations Approximate, For Illustrative Purposes Only.

Source: Department of Water Resources 2001



## 2001 Aerial View: Vicinity of South Moss Beach Site



EXHIBIT NO. 14

A-2-SMC-00-031  
(Moss Beach Highlands)

Note: Locations Approximate, For Illustrative Purposes Only.

Source: Department of Water Resources 2001



Row Cropping on POST Land  
South of the South Moss Beach Site

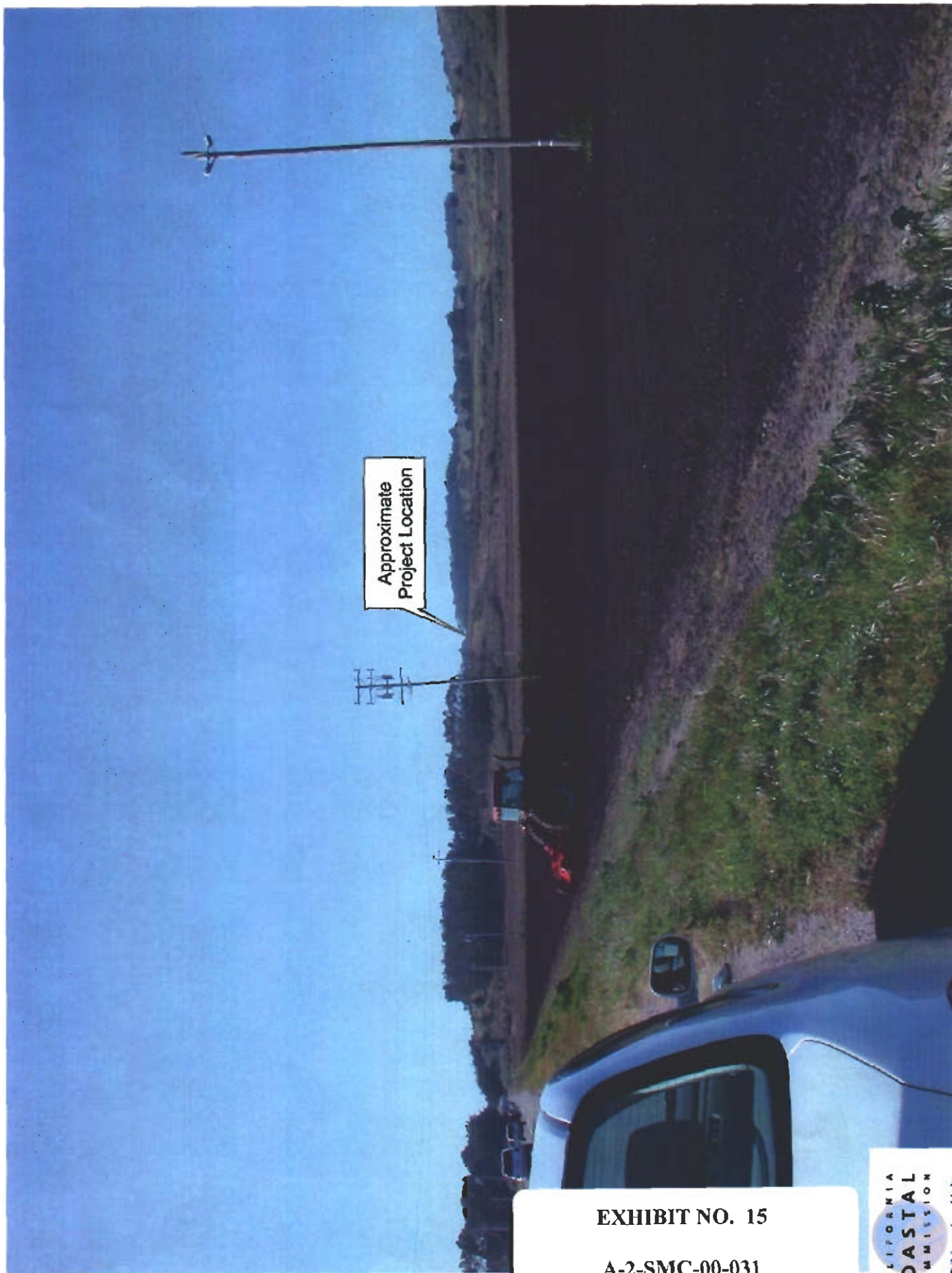


EXHIBIT NO. 15

A-2-SMC-00-031  
(Moss Beach Highlands)

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EXHIBIT NO. 16

A-2-SMC-00-031  
(Moss Beach Highlands)



Existing Viewpoint A  
(Near Intersection of Hwy. 1 and Cypress Ave.)

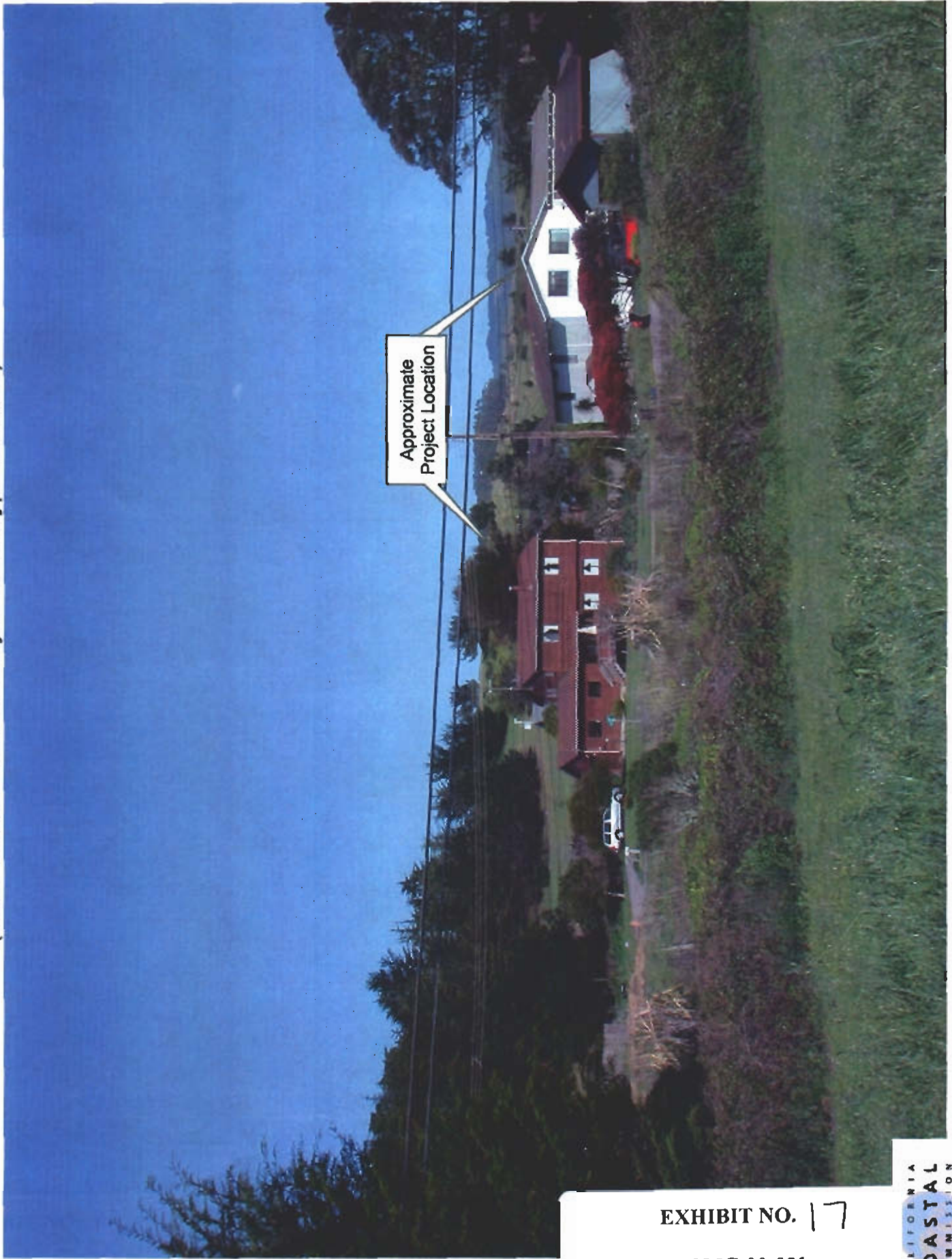


EXHIBIT NO. 17

A-2-SMC-00-031  
(Moss Beach Highlands)

# Viewpoint A - Photosimulation of Approved Development (Near Intersection of Hwy. 1 and Cypress Ave.)



EXHIBIT NO. 18

A-2-SMC-00-031  
(Moss Beach Highlands)

..... of Revised, Reduced Density Alternative with Relocated Tot Lot, Single-story Houses and Mitigation Landscaping

Source: Environmental Vision 7-20-00

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Existing Viewpoint B  
(Near Intersection of Hwy. 1 and Marine Blvd.)



EXHIBIT NO. 19

A-2-SMC-00-031  
(Moss Beach Highlands)

Existing Viewpoint C  
(Near Intersection of Hwy. 1 and  
Southern End of Etheldore St.)

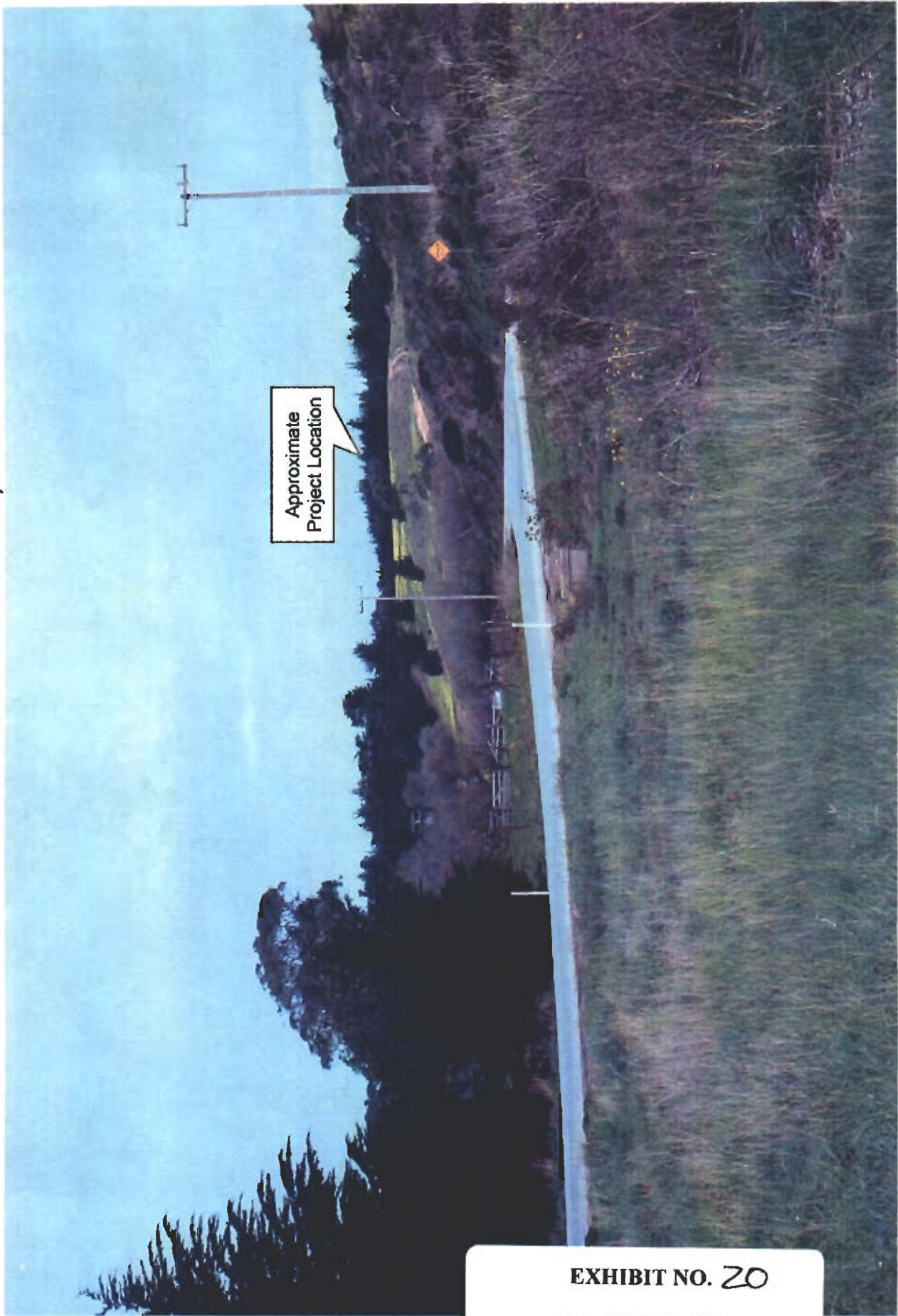


EXHIBIT NO. 20  
A-2-SMC-00-031  
(Moss Beach Highlands)